

**Making History: Current Events in Our Nation
Looking Back, Looking Forward**

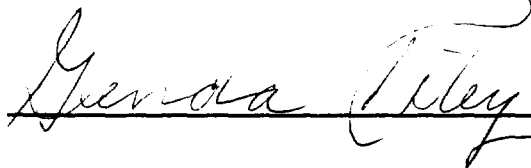
An Honors Thesis (HONRS 499)

by

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Purpose of Thesis

The following thesis is a summary of the steps taken over a year and a half in putting together and teaching an Honors colloquium at Ball State University. The course, entitled "Making History: Current Events in Our Nation, Looking Back, Looking Forward," was taught by myself and Dr. Glenda Riley in the fall of 1995. In addition to the chronological process, it serves as an evaluation of the experience.

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Winter, 1994

The time had come to choose a project for my senior Honors thesis. Although I had no idea what I wanted to do, I had very strong feelings about what I wanted to accomplish. First, I wanted to bring together different areas of my studies at Ball State. These included Political Science, Latin, History and Classic Cultures.

Next, I wanted to bring in the leadership skills I had been developing throughout my college career. I knew it was not enough for me to merely research a topic and write a paper on it. Lacking all artistic creativity, I could immediately rule out any type of public performance.

Lastly, I wanted to work closely with a mentor from whom I could learn more than what can be found in a book. It was important to find someone whom not only would I respect, but would also respect me. The learning experience of my thesis would not only be in what I researched, but how my mentor would help me apply it.

As a thesis is supposed to be a sort of senior capstone to one's years in college, I had to find a way to incorporate all these ideas. Moreover, I wanted the experience to be one which I could look back on in my future career as an experience which truly shaped my education. For me, the thesis would have to be not only a final stand in my college career, but also a jumping-off point for my future.

Spring, 1995

In early 1995 I got the idea to teach an Honors Colloquium as my Honors Thesis. I had noticed that two other women were doing it that semester and thought it would be a wonderful experience for myself. Although I didn't quite know what I would teach or who I would have as a Mentor, I knew for certain it was what I wanted to do. It managed to incorporate the ideas I had for the perfect thesis.

Because I and many of my friends are Political Science majors, we often talked about the Ball State curriculum. One of the things we discussed was the need for a class which would focus on current events. It would give the students a reason to watch the news and follow the issues. More importantly than that, I felt the students needed to study where these issues came from. Being a history major, I had noticed the repetition of certain issues over time. This is where the idea for the class started.

Beyond that, I had figured out normal details. The issue of constitutional rights had crossed my mind, but I had not formulated a syllabus. The next important step would be to make sure I was even allowed to teach the class. I went straight to Dr. Wittig, Dean of the Honors College.

Dean Wittig was very open to the idea. He offered a few suggestions on the next steps to take. He said the idea in general was a good one and the current student-taught class was successful. He encouraged me to find a mentor and begin work at once.

Finding a mentor proved to be easy. I first approached Dr. Edmonds because he had team-taught a similar class before and asked him for suggestions in the History Department. I decided to ask a history professor because my expertise is stronger in political science than history. A good

balance would require a history professor with special interest in American history.

Dr. Edmond's first suggestion was Dr. Glenda Riley. I was already a student secretary for her and Dr. Edmonds thought she had the perfect range of expertise. I agreed and decided to immediately ask her. However, it took me a while to get around to doing it because I thought the idea might be a little too far-fetched or too much trouble for her.

As soon as I explained my idea to Dr. Riley, she agreed to help me. She even began throwing out ideas for subject matter. We began drafting a preliminary course outline. Having decided definitely on constitutional rights, I had to then break it down into lessons. Dr. Riley suggested doing a unit on discrimination. We then broke that down into discrimination against blacks, women, and homosexuals. Lastly, I decided to compare the presidencies of Truman and Clinton.

Dean Wittig then suggested we apply for an Undergraduate Fellowship. That would pay me for my work for up to two semesters. The paperwork was easy and we received a fellowship for the summer. Unfortunately, there was not enough money available for the fall. However, he encouraged me to contact him again in the summer to see if any money had become available.

After discussing the course topics, Dr. Riley and I agreed that it would be difficult to find appropriate texts. The subject matter was very broad and we would be focusing on small issues. An alternative to a series of textbooks was a course packet. I would put this together over the summer and have it printed at the Ball State Bookstore.

The last thing left to do before summer vacation was set up a tentative timeline. I would be at home in Evansville and Dr. Riley would be in Muncie. Therefore, we set certain dates by which I would contact her with different tasks

accomplished. I would then visit Muncie so we could work out details. I was to have the syllabus finished by the beginning of June.

Summer, 1995

In mid-May, I began setting a tentative syllabus. I had broken the main topic of history repeating itself down into the three main course topics. The next step was to break down the main topics into separate lessons. Because constitutional rights was the most broad area, I decided to break it down into the most lessons. After looking through cases and constitutional law books, I decided to concentrate on four main areas: separation of church and state, right to bear arms, freedom of expression, and privacy. For discrimination, there would be three main lessons: discrimination against blacks, discrimination against females, and discrimination against homosexuals. The section on President Clinton and Harry Truman would be broken down into two weeks.

I then began thinking about assignments. For an honors colloquium, it didn't seem right to have weekly assignments to turn in or tests over material covered. I wanted the students to concentrate more on their feelings based on the facts of the issues than just memorizing the facts. That in mind, I decided to break the course down into three main grades: mid-term, final, and overall participation. However, the mid-term and the final would both be papers instead of tests.

Deciding on the kind of papers was easy given the set-up of the class. The university mid-terms fell during the discrimination unit. Therefore, I would have them compare either discrimination against women or blacks to discrimination against homosexuals. They would have the choice and then would defend their papers to the class. For the final, they could pick any topic of their own which dealt with history repeating itself. This would give them the chance to explore an area of interest outside of politics. Also, it would force them to look at current events. Along with the paper, they were to give a "creative" presentation.

After I broke the semester down into the separate lessons, I went back in and filled in films, lectures, surveys and quizzes. Each week, we would start with some kind of information session (lecture, film) or fun activity (survey, quiz) and then break down into discussion. This would allow them to draw in their assigned readings as well as the new information.

Finally, I had to determine an attendance policy and grade distribution. Because the class met only once a week, attendance was mandatory. The final would make up 50 percent of their total semester grade. The mid-term would constitute 30 percent. The remaining 20 percent would come from attendance and participation in class discussion.

I then faxed the syllabus to Dr. Riley. We had been keeping in touch via e-mail. She was to look over the syllabus and we would then discuss it over the phone. Although the syllabus was, for the most part, satisfactory, she offered a couple suggestions which I took. First, the mid-term assignment was changed to allow for students who did not feel comfortable writing about homosexuality. The paper would now be comparing two of the three types of discrimination. The students would be allowed to choose the two for themselves. Also, she felt it too biased to have a lesson only on Democratic presidents and not Republican. Therefore, the lesson on Clinton and Truman became a lesson on Democratic presidents and their Congresses. Another lesson, focusing on Republican presidents and their Congresses was inserted (Appendix A).

I then began working on the course packet. I started by deciding to use mainly magazine articles for current events. For history, I would use propaganda pieces and supplement them with the actual facts. This would allow the students to see how the issues were viewed while still having the unbiased case facts and laws to refer to. I used the Internet in one way or another to find all of my information.. In some cases, I was able to download articles directly. In other

cases, I could only locate articles and then had to track them down at the library to copy them and input them into my computer.

The American Civil Liberties Union (ACLU) put out briefs on all of the constitutional issues we would be looking at. Each brief listed the history of the issues and incorporated all of the relevant cases and laws. To counteract the liberal briefs, I inserted articles from the National Rifle Association, various religious groups, and actual presidential addresses.

For current events, I tried to find articles on both sides of each controversy. I relied mainly on Time magazine, the Washington Post, and U.S. News and World Report. Because I was downloading directly from the publishers, I was able to get the most recent articles of each. In addition, directly downloading them allowed me to put them into a word processing program and format them to create the course packet.

To have the course packet printed, I had to first create a bibliography of all the articles listed (Appendix I). This was faxed to the Ball State Bookstore and they did the copyright searches for me. They would add the royalties owed into the student cost of the packet. After I had formatted all of the articles, added page numbers, a table of contents and a title page, the book was sent to Ball State (Appendix B). From there, they took care of the printing and binding to get the book ready for the first day of class.

The time came to make my trip to Muncie. I had previously set up meetings with Dr. Wittig and Dr. Tony Edmonds. Dr. Edmonds had team-taught the first student-led honors colloquium. We discussed some of the problems he and his student had so that Dr. Riley and I might not make the same ones. He offered suggestions to both Dr. Riley and myself as to how to make the course successful. One such suggestion was for Dr. Riley to observe my teaching style the first couple of weeks and then discuss it with me. This would not only help

me feel more comfortable, but would also head off any major problems before we got too far into the semester.

My meeting with Dr. Wittig also proved helpful. He informed me that money had become available and my fellowship would be extended through the fall semester. We discussed the Spring 1994 student-taught class. Overall, that class had gone well, but their evaluations were not as high as they would have liked for them to have been. He encouraged me to keep open communication between myself, the students, and Dr. Riley.

The course packet was on its way to the printer. I received my first class list. Some were students I knew and others were students I had never even heard of. I wanted the students to enjoy coming to class each week. I decided I needed a few "gimmicks". Dr. Edmonds had suggested I do a preliminary quiz to see where the students stood in relation to knowledge of the course material. Thus, I designed a fun quiz which would accomplish two main goals: let the students know that they could feel comfortable in the class and let me know how much knowledge they were coming in with.

My final summer preparation for the class consisted of setting up a World Wide Web Page on the Internet. Knowing most students are not yet comfortable with the WWW, I described in the course packet how exactly they could access it. The site contained information on all of the course topics, a course syllabus, as well as links to information servers such as USA Today and Time-Warner. Although it would not be a mandatory part of the class, I would encourage them to use it as an additional resource.

Fall, 1995

Coming back to Ball State, all I could think about was teaching the course. In fact, I was more worried about the colloquium than any of my other classes. It was an experience I knew I was fortunate to be having. I also knew that the results of my class could help or hinder student-taught classes in the future. I checked daily to see if the course packet was finished yet. I copied syllabi as well as the preliminary quizzes.

The day before my first class, I met with Dr. Riley to get last-minute instructions. We talked about what I would wear the first day, how I would introduce myself, and some of the intricacies of teaching a class the first day. Although I was nervous, I was very excited. I had waited eight months to teach this class and now had to wait less than 24 hours.

Dr. Riley and I met right before class and decided that I would introduce myself to the class first and then she would come in for an introduction. That would get the class used to the idea that I was as much an instructor in the class as Dr. Riley. It would also give me a few minutes alone with the class to feel out the atmosphere.

Immediately there were problems. I looked around the room to see a few friendly faces and was met instead by many confused strangers. One student, whom I knew, asked me why I was standing at the podium. I started by asking how many of them knew the class was going to be taught by me. Surprisingly, only a few raised their hands.

Next came the standard first day problems. Some people weren't on the list who should have been. Others who should not have been were on it anyway. I passed out notecards to get names, phone numbers and e-mail addresses. I then passed out the syllabus. No sooner had I passed it out than people started looking at me with confused faces. A few started whispering to each other. As it

turned out, about five of them were in the wrong place. They excused themselves and my confidence went down about 50 percent.

I then introduced Dr. Riley to the group and we talked about the experimental nature of the class. The remaining 10 students seemed to like the idea and all looked genuinely interested. I decided to next spring the quiz on them (Appendix D). At first, they seemed a bit angry to have a quiz on the first day. However, after they saw the multiple-choice questions and the funny answers, they loosened up. The results of the quiz were interesting to me. Questions I thought every one of them would know the answers to ended up stumping them. Things I took for granted as common knowledge obviously weren't. It helped me to know that I would need to explain things to them a bit more than what was in the course packet. I promised them that by the end of the course, they would be able to correctly answer every question on the quiz.

For the last 30 minutes of class, we got into a circle and discussed expectations and the course syllabus. Each student had different interests and backgrounds. However, one thing held true with all of them: they seemed at least willing to give me a chance and help me make the course work.

After class, I met with Dr. Riley to discuss how the day went. Both of our overall impressions were that it had gone well. She talked to me about some minor presentation idiosyncrasies that I have and how to correct them. She really boosted my confidence about the course. I left Burkhardt that day even more excited about teaching than I had been when I conceived the idea.

We first began studying the chapter on separation of church and state. This lesson focused on prayer in schools. Cases I thought would be familiar to them such as Lee v. Wiesman were instead foreign and so I spent extra time listing them on the board and explaining them. The class quickly divided into

liberals and conservatives. The discussion was spirited and everyone came away having expressed their views.

The next lesson in constitutional rights centered on the right to bear arms. Surprisingly, the class shifted to almost completely liberal. Reading propaganda from the NRA amused them all and they immediately attacked it. Almost all were in favor of gun control of some form. The shift a few of the students made from conservative to liberal made everyone eager to see what the next class session would bring.

In order to increase opposition in the class for discussion purposes, I prepared a survey for the next class meeting (Appendix E). It centered on the next lesson, freedom of expression. The students ranked a list of statements numerically from strongly agree to strongly disagree. Then, they scored their responses. Each student came up with a number on a scale of very liberal to very conservative. Instead of sitting in our usual circle, they moved to sit in order of their numbers from the most liberal on my left to the most conservative on my right.

From this standpoint we discussed the text. Students disagreed sharply on issues involving sex and violence in the media. Censorship became a heated topic. Although the scores held generally consistent to the students' views, every once in a while a student would break from his or her side of the circle to defend a statement. Overall, the discussion was strong and the students were hesitating to leave class even when we were over time by 6 minutes.

For right to privacy, the class suggested we get some sort of guest speaker. I contacted the ACLU and they recommended a former teacher. After, contacting her, she consented to come speak to the class. With her, she brought numerous magazines, journal articles, and pamphlets arguing both sides of the issues. However, her opinions were decidedly liberal and sparked angry

discussion within the group. Some group members were intimidated and discussion did not go as well as usual. However, the class learned a valuable lesson in opinions and propaganda.

Moving from constitutional rights, we began studying discrimination. Because the class was all Caucasian, we did not have the opportunity for varying viewpoints. I tried to compensate for this with a film on Martin Luther King. However, the class saw the film as too one-sided and it therefore lost some of its effectiveness. Fortunately, the OJ Simpson trial was going on the same time as this unit and gave us a current even to focus specifically on.

The class met within a week of the OJ Simpson verdict to discuss discrimination against homosexuals as it compares and contrasts to discrimination against blacks. Because it was a nice day, we decided to have class outside in the grass. We were able to look at the racial divides in our country and see how homosexuals fit into that. Although the entire class argued for equal treatment of homosexuals, some students appeared uncomfortable with the topic. However, the casualness of sitting outside and talking as peers helped everyone to open up more than usual.

Dr. Riley, a specialist in women's history, gave the next lecture on discrimination against women. She drew in parallels to discrimination against both blacks and homosexuals. The class enjoyed hearing from an expert in the field and being able to ask her questions they never had the answers to in other history courses. In addition, many of the points she raised helped the students prepare for their mid-term papers.

The class was to be split up into three groups for the mid-terms. Each student was asked to submit his or her request for two of the three topics they wanted to research. In addition, they could note if there was a topic they wished, for one reason or another, not to discuss. Luckily, the class divided up evenly

based on their own choices and therefore each student got to write on their preferable topics.

The assignment was two-fold (Appendix F). First, they would write a 3-5 page paper comparing or contrasting their two groups. Their choices were based on the three lessons in the unit: blacks, women, and homosexuals. They could compare and/or contrast particular attributes of the groups such as discrimination against them, their mobilization, or their future direction. On the day the papers were due in class, the people with the same topic would discuss their papers for 15 minutes and then present their findings to the rest of the class. The other groups would then question them based on their presentation and they would have to defend their papers.

This was my first major grading responsibility. The papers would serve as a portion of their mid-term grade with the presentation making up the rest of it. The papers were not quite what I had expected. There were more grammatical errors than I would expect from an Honors class. There seemed to be silly mistakes in some of them. In others, the mistakes were huge. I wondered at first if maybe they had not taken the assignment seriously.

However, the presentations turned out quite well. The small groups worked together to pool their information. Each group successfully defended its papers. The classroom was alive with arguments and counter-arguments. Where I was a little disappointed with the papers, the class more than made up for it in presentation.

Early into the semester, the Honors College sent out a memo regarding a series of teleconferences it would be participating in. It asked the faculty to consider using at least one of the teleconferences for their classes if they pertained. The program was experimental and needed feedback. Dr. Riley then approached me to try to fit one of them into the colloquium. Because the syllabus

was fairly flexible, we were able to fit on of the conferences into the schedule. Instead of meeting for class one Tuesday, we would meet that night at the scheduled teleconference time.

Ahead of time, I divided up the court cases which would be discussed among the students. Because there were many, each student would be responsible for studying a few of them and being able to explain them to the class. However, because the teleconference did not pertain directly to our course material, the majority of the students were uninterested.

The final unit of the course was that on the presidents. The unit, covering only the two major political parties, would last only two weeks. An overview week was taken out to make room for the teleconference. Each week would focus on a biographical movie of a president and then open up to discussion of the movie and text. To start the unit, I passed out a list of presidents and asked the students to identify their political parties (Appendix H). Although many students only answered about half correctly, it was interesting to note that students who normally participate as well in discussion were the ones with the most correct.

The first week focused on the Republicans. A short film on Dwight Eisenhower with subsidized with presidential inaugural addresses in the text. For the most part, the class discussion was non-partisan and mainly factually based. Discussion centered around perceptions of presidents and how they have changed. In addition, the class consensus was that the media has had the biggest role in changing perceptions of presidents.

My final lesson was that of President Clinton and his similarities to President Truman. A short film of Truman was used to show the history of the issue. Recent magazine articles pointed out possible similarities. Again, the

discussion was calm and almost non-political. Some agreed with the similarities and others passively disagreed. There was little controversy to stimulate debate.

The last two weeks of the semester were reserved for finals (Appendix G). Each student wrote on an approved topic based on the repetition of history. The class was then divided into two groups to give presentations. They were instructed to make their presentations creative, as a large part of their final grade would be based on them.

The final papers had many of the same characteristics of the mid-terms. There were many errors which a simple spell-check or grammar check would have picked up. Content ranged from stellar to barely there. In fact, a couple students did not even touch on the repetition of history. However, as with the mid-terms, the presentations redeemed many of them.

It was much more difficult grading the papers than I thought it would be. Because everyone's topics were so different, it was hard to judge who had more information. Yet, it was very interesting reading the papers and I learned as much as they did. There were a few topics of which I knew next to nothing about. Learning from them as they had learned from me all semester seemed to round the course out.

The time I had been dreading all semester had come. Not only did I have to grade their finals, but also give participation grades and determine semester grades. Dr. Riley and I met, each with our own opinions. We then went over the gradebook and comments we had written down about each of the students until we got to a point where we were both comfortable with the grades being issued. Because it was late in the term, the students were advised to call me at the end of finals week if they wanted to know their grades.

At the end of the semester but before grades came out, we sat down as a class and openly discussed the semester. First, they voted on the area which we

studied that they enjoyed most. Although there were votes for separation of church and state, the right to bear arms, racism and sexual orientation discrimination, a plurality of the votes were for freedom of expression. This was partly attributed to the quiz which I administered. Also, the students felt their feelings were really being taken into consideration.

I then asked them for suggestions in case I were to ever teach the class again. Most agreed that the president unit was the weakest. For the discrimination unit they suggested bringing people of different ethnic backgrounds to provide perspective. Overwhelmingly the class preferred the constitutional rights unit to the others.

All in all, the class grading ran quite smoothly. We tried to be as fair as possible based on all the circumstances. Not all students, however, thought we had been completely fair. Other students thought we had been more than fair. Upon talking to students after the grades were determined, I learned the value of the saying "teachers don't give grades, students earn them." To this day, I am certain each student got the grade he or she earned.

Winter, 1995

Toward the end of the course, Dr. Riley administered two sets of evaluations to the class. The first of these was an evaluation I designed myself. It was mainly so that I could get a feel of the class' response to a student-taught class compared to regular classes at the university.

The class rated a series of statements from 1=strongly disagree to 5=strongly agree. Of primary importance to me was whether or not the students felt that the fact that it was a student-taught class had a negative impact on their progress in the class. The class average fell between disagreeing that it had a negative impact and strongly disagreeing that it had a negative impact.

Another important statement on the evaluation was whether or not the students would take another student-taught class. The class response average fell between agreeing to take another student-taught class and strongly agreeing to take another student-taught class. To me, this was most important because it opens the door for other students to take on similar projects and hopefully have a good class turnout.

On a more personal level, the statement reading "the student-teacher was familiar with the material she presented" was important. The class average response was between agree and strongly agree. This lets me know that all the researching and hard work I put into learning the material did not go unnoticed.

The most disappointing of all the responses was the answer to the statement "the class was more interesting than I expected." The class average was a 3.9, just below "agree" but far above "neutral." On the one hand, I have to wonder if the class was not interested in the materials. On the other hand, the way the question reads, it could just be that the students were interested in the course as soon as they came into it.

There was a space at the bottom for personal comments, but few students wrote any in on this particular evaluation. However, the ones written in were all positive. One student responded that I seemed to have put much time and effort into the class. Another wrote that the fact it was student-taught added to the success of the class. The final student wrote that he/she felt comfortable discussing in class and that discussion was handled professionally.

The other set of evaluations administered was the standard Honors College evaluations. This was a series of rank statements followed by an area for general responses. The most significant of all the statements was "Compared to other instructors I have had at Ball State University, I would rate this instructor as". The class average for this statement was 4.4. On the scale of 1 to 5, this fell right below "much better." To me, this was important because the class overall was satisfied with my teaching style.

In addition, there were two other statements which I scored almost perfect on. For the statement "I would rate the instructor's organization of the course material," the class average was 4.9. A perfect 5 represented "highly organized." On the other statement, "The instructor was enthusiastic and interested in the subject," the class average was a 4.8 with a perfect 5.0 being "strongly agree."

The lowest score I was given concerned the statement "Compared with other Honors instructors I have had, this instructor was." The class average was a 3.9, just below the "better" mark. However, it was well above the 3.0 "neutral" score. Although I was a little disappointed with this score, I have to keep in mind the caliber of wonderful Honors instructors at Ball State.

There were many written comments from the students on the Honors College evaluations. The most often mentioned weak point of the course was the lack of time to discuss specific points of interest. Suggestions included broadening the material a bit so as not to focus in on so many court cases.

Ironically, over half of the students suggested that the class either run longer or meet more often. This was the greatest compliment I received.

Spring, 1996

Looking back, looking forward. Not only was this the focus of the course, it is the focus of my entire thesis. Consequently, it is time that I look back on what I learned from the course and how it will shape my future.

When I began working on ideas for a thesis, I had definite goals I wanted to accomplish. First, I wanted to combine academic areas that I have concentrated on in college. The two of these I chose to incorporate were political science and history. In putting together the course packet and researching for the class, I learned more than I ever could have by merely reading textbooks. Teaching the two areas together forced me to understand the relations between the two.

In addition, I was able to incorporate current events and use them to demonstrate history. For example, the class could draw parallels between the obstacles homosexuals face in marriage to those African Americans and Caucasians once faced. Bringing in examples from current political science made studying history more vivid.

The second idea I wanted to bring into my thesis was that of leadership. I wanted my project to reflect the leadership experience I gained as a student. In facilitating class discussions I had to do just that. Not only did I have to lead the discussions, I had to lead them impartially. I practiced setting aside my own beliefs to draw opinions out of others. Important leadership characteristics such as the class having trust in me helped make discussions run smoothly.

Another aspect of leadership I had to deal with was authority. Although the classroom setting was somewhat casual, I had to make the students understand that they had to respect me as their instructor. I had to make authoritative decisions such as grades, excusing absences, and extending assignment deadlines. Even though this was difficult at first, I had no problems

with lack of respect from this class. In fact, they treated me more as an instructor than I thought they would. This, coupled with Dr. Riley's confidence in me, made leadership easy.

This brings me to my last point. Never had I imagined the influence my mentor would have on me. Not only did she guide me through the construction and instruction of the class, she became a mentor in every sense of the word. She worked with me on teaching styles, classroom techniques and people skills. Dr. Riley helped me to get all that I wanted and more out of my teaching experience.

Another result I hadn't anticipated came from the students. I learned as much from the students as they had from me. While they were memorizing dates and court cases, I was gaining an understanding of people's opinions and beliefs. I figured out that when students are given all the facts, they are no longer apathetic to politics. It is only when they do not understand that they do not care. In addition, most students are not true liberals or conservatives, but a combination of both.

Looking toward the future, I see myself going down a different path than I did a year ago. No longer am I ardent about practicing law. Instead, I would be just as content to teach it. In fact, after teaching last semester, I hardly see myself heading in any other direction than becoming a professor.

Although the road was not completely smooth, the high points more than made up for the low points. The experience of combining political science, history, leadership, and mentorship made for the perfect Honors thesis. It was truly a capstone of looking back and a catalyst for looking forward.

Acknowledgements

First and foremost I would like to thank Dr. Glenda Riley without whom this project would not have been possible. Next, sincere thanks go to Dr. Arno Wittig for being willing to take a risk. Dr. Anthony Edmonds provided guidance as well as much-needed encouragement. To my mother, Cindy, I owe gratitude for long-distance support even when she had no idea what I was rambling on about. My roommate, Amy, acted as a sounding-board for every idea I ever had and I thank her for being open-minded but keeping me on track. Last but not least, I would like to thank Kevin Meyer for saving my rough draft even after I had erased it. His valuable computer skills rescued me more than once.

APPENDIX

Honors 390A
Making History: Current Events in our Nation--
Looking Back, Looking Forward

Tricia Walter
02TLWALTER
Dr. Glenda Riley
00G0RILEY

Fall 1995
Tuesdays 2:00-3:50
BB 102

Course Packet:

Making History Available at the Ball State Bookstore

The goal of this class is to explore current events in such a way as to show that history repeats itself. Further than that, we will attempt to predict what will happen in the future based on what we know of the past and present. History is more than the past that we read in a book. It is an explanation of the present and an indicator of the future.

Because the class consists of three virtually unrelated topics and deals heavily with current events, there are no required texts. However, there is a required course packet as well as a link set up on the World Wide Web exclusively for this class. To access the web site, type *LYNX* at your user prompt. Select *G* to go to a URL. Enter the following URL exactly as it appears:

<http://bsuvc.bsu.edu/~02tlwalter/390A.html>

For those of you with little or no Web experience, feel free to meet with me and I will explain it to you. Although it is not a required part of the course, the Web Site that has been set up can be of immeasurable value to you in locating information to be used in the class.

GRADES:

There will be two main class assignments which will be detailed later. They will account for 80 percent of your grade. The other 20 percent will consist of attendance and class participation. As the class meets only once a week, **attendance is required**. If for some reason you are unable to attend class, please contact me as soon as possible. Your grade is based partly on participation and you cannot participate if you are not here. The grading scale will be as follows:

90-100%	A
80-89%	B
70-79%	C
60-69%	D
below 59%	F

This colloquium is being taught as part of an Honors Thesis. Therefore, I will be doing the grading with final approval by Dr. Riley. It is, in addition, part of an Undergraduate Fellowship. Because of this, it is experimental. If at any time you have any suggestions please share them with me.

If you need course adaptations or accommodations because of a disability, if you have emergency medical information to share with me, or if you need special

arrangements in case the building must be evacuated, please speak with me as soon as possible.

CALENDAR:

August 22	Introduction to course Class discussion of student views of course topics Film <u>Warren Court</u>
August 29	Constitutional Issues Film <u>The Constitution: That Delicate Balance</u> (9) Discuss: Separation of Church and State
September 5	Constitutional Issues Discuss: Right to Bear Arms Film <u>Gun Control</u>
September 12	Constitutional Issues Discuss: Freedom of Expression
September 19	Constitutional Issues Film <u>Constitution: That Delicate Balance</u> (10) Discuss: Privacy
September 26	Discrimination-Race Film <u>The Fateful Decade: from Little Rock...</u>
October 3	Discrimination-Women Dr. Riley lecture
October 10	Discrimination Discuss: Homosexuality Movement
October 17	No class
October 24	Mid-term Arguments
October 31	Congress and the President Film <u>Constitution: That Delicate Balance</u> (1) Discuss: Duties, conflicts
November 7	Congress and the President-Republicans Film <u>Eisenhower: Years of Caution</u>
November 14	Congress and the President-Democrats Film <u>Truman: Years of Decision</u>
November 21	No class-finals due
November 28	Final Presentations
Final, as scheduled	Final Presentations

Note: All films will be on reserve in Bracken Library if you should happen to miss a class or want to review particular parts of a film.

ASSIGNMENTS:

The first assignment will be due on October 24. It will be a 3-5 page paper comparing or contrasting two of the following three topics: sexual orientation discrimination, sexual discrimination, and racial discrimination. On the 24th, along with turning in a copy of the paper, the class will debate the topic by defending their papers.

This will make up 30 percent of the students' grades. Each paper must use at least three sources besides the course packet.

The second assignment will be due November 21. It will be a paper on any approved topic which deals with current events how history either does or does not repeat itself. No topic studied in the class may be used. You are encouraged to choose a topic in your field of study.

The paper must be 7-10 pages long and use at least five different sources. The last two days of class (including the designated Final Exam day) will be spent on presentations. Each student will give a 5-10 minute creative presentation on their topic.

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Honors 390A Course Packet

Making History: Current Events in Our Nation Looking Back, Looking Forward

Tricia Walter
Glenda Riley
Fall 1995

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Chapter 1 Separation of Church and State

Jefferson's Bill for Religious Freedom

JEFFERSON'S DRAFT (1779)

A Bill for Establishing Religious Freedom

SECTION I. Well aware that the opinions and belief of men depend not on their own will, but follow involuntarily the evidence proposed to their minds; that Almighty God hath created the mind free, and manifested his supreme will that free it shall remain by making it altogether insusceptible of restraint; that all attempts to influence it by temporal punishments, or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the holy author of our religion, who being lord both of body and mind, yet chose not to propagate it by coercions on either, as was in his Almighty power to do, but to extend it by its influence on reason alone; that the impious presumption of legislators and rulers, civil as well as ecclesiastical, who, being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavoring to impose them on others, hath established and maintained false religions over the greatest part of the world and through all time: That to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness; and is withdrawing from the ministry those temporary rewards, which proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labours for the instruction of mankind; that our civil rights have no dependance on our religious opinions, any more than our opinions in physics or geometry; that therefore the proscribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which, in common with his fellow citizens, he has a natural right; that it tends also to corrupt the principles of that very religion it is meant to encourage, by bribing, with a monopoly of worldly honours and emoluments, those who will externally profess and conform to it; that though indeed these are criminal who do not withstand such temptation, yet neither are those innocent who lay the bait in their way; that the opinions of men are not the object of civil government, nor under its jurisdiction; that to suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the profession or propagation of principles on supposition of their ill tendency is a dangerous falacy, which at once destroys all religious liberty, because he being of course judge of that tendency will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own; that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order; and finally, that truth is great and will prevail if left to herself; that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict unless by human interposition disarmed of her natural weapons, free argument and debate; errors ceasing to be dangerous when it is permitted freely to contradict them.

SECT. II. WE the General Assembly of Virginia do enact that no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer, on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.

SECT. III. AND though we well know that this Assembly, elected by the people for the ordinary purposes of legislation only, have no power to restrain the acts of succeeding Assemblies, constituted with powers equal to our own, and that therefore to declare this act irrevocable would be of no effect in law; yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present or to narrow its operation, such act will be an infringement of natural right.

ACLU ANSWERS

<--Issue

Constitutional Amendment on School Prayer or Moment of Silence

<--Our Position

The ACLU Opposes a School Prayer Amendment to the Constitution

BACKGROUND

Surprising even his staunchest supporters with the swiftness of his action, the House Speaker-elect, Newt Gingrich, this week announced his intention to push immediately for adoption of his proposal to amend the U.S. Constitution "relating to voluntary school prayer." The Gingrich proposal states: "Nothing in this Constitution shall be construed to prohibit individual or group prayer in public schools or other public institutions. No person shall be required by the United States or by any State to participate in prayer. Neither the United States nor any State shall compose the words of any prayer to be said in public schools."

In spite of the caveats in the last two sentences, if adopted the amendment would allow public officials, including teachers, to dictate how, when and where school children and others should pray, thus undermining one of the core values of the First Amendment: the complete freedom of religious conscience through the nonestablishment of religion. The U.S. Supreme Court has repeatedly said that officially organized prayer is coercive in a school environment, even when designated as "voluntary."

A constitutional amendment requires the approval of two-thirds majorities in both houses of Congress and then of the legislatures of three-quarters of the states. Gingrich has announced his plans to hold public hearings around the country this winter and spring -- presumably in locations thought to be most receptive to the idea. He hopes to have a vote on the issue by July 1.

President Clinton, apparently concluding from the election results that he must appease the new Republican majority, caved in almost immediately. First, he announced that he was open to working with Congressional Republicans on a school prayer amendment. The next day, the Administration said the President had been misunderstood, and that what he had in mind was a federal statute permitting "moments of silence" in the schools. Such a statute would, however, be susceptible to constitutional challenge. At best, it is unnecessary since teachers already have the authority to ask their students to be quiet. At worst, it is organized prayer by stealth, as recognized by the Supreme Court in its decision in *Wallace v. Jaffree* (1985) in which the Court struck down Alabama's moment of silence law.

The mindless notion that serious social problems can be solved by prayer in schoolrooms, instead of by thoughtful analysis and sufficient resources, appeals to no one but the radical religious right. Should it actually pass, a constitutional amendment on school prayer would mark the first time in our nation's history that the original Bill of Rights would be amended -- a striking departure from traditional American values that would set a dangerous precedent.

IN SHORT

--Newt Gingrich is playing politics with something sacrosanct: each American's right to decide whether, when, where, how and with whom to pray.

--We do not need a school prayer amendment. Every child in the United States already has the right to pray in school on a voluntary basis --it's called the First Amendment. For more than 200 years, it has worked so well that in spite of tremendous religious diversity, we have more religious liberty in this country than anywhere else on earth. That diversity would be endangered, not enhanced, by an amendment that would promote organized school prayer.

--Why are conservatives, who say they want to get the government off our backs, trying to interfere with something as personal and private as religious conviction? The truly traditional American value is the freedom to pursue any religion, or no religion, without government interference or coercion.

--This proposal is already creating just the kind of divisiveness that the framers of the Constitution were seeking to prevent when they adopted the First Amendment.

--Leave the Bill of Rights alone. If the school prayer amendment is adopted, it will be the first time in our history that the original Bill of Rights has been altered. The Bill of Rights is supposed to protect our fundamental liberties from political winds. It reflects our deepest values and most traditional beliefs. Once we start playing politics with the Constitution, there's no telling where it will stop.

ACLU POLICY

Opposition to school-sponsored prayer is a bedrock principle for the American Civil Liberties Union. As national board policy #81(a) states in part: "The ACLU believes that any program of religious indoctrination -- direct or indirect -- in the public schools or by use of public resources is a violation of the constitutional principle of separation of church and state and must be opposed."

The policy states further (#81(b)) that the ACLU "opposes the infusion of other types of religious practices and standards into the public schools. These include such practices as baccalaureate exercises in the form of religious services, prayer meetings at athletic events, the taking of a religious census of pupils ... and the profession of religious observance or belief as a consideration in the evaluation and promotion of teachers." [1932, 1962]

ARGUMENTS...FACTS...QUOTES

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." With these words, the framers of the Constitution established one of the central principles of American government -- that religious liberty can flourish only when the state leaves religion alone.

Under the Gingrich amendment, public officials would be authorized to indoctrinate impressionable young people into an officially endorsed religion. What is tyranny, if not that? Children, who are required to attend school by law, should not be placed in the position of having to choose between pressures from their teachers and peers and their parents' instructions on religious practice. Where official school prayer has been permitted, the result has not been pretty: Documentation is abundant of non-conforming students being called "little atheists" by their teachers, being beaten up or subjected to taunts and classroom jokes. This amendment would breed religious intolerance.

Fifty years of Supreme Court jurisprudence has maintained this "wall of separation between Church and State" so that the United States is a model of religious freedom for the world. The fundamental principle behind the Supreme Court's rulings has been that public schools may not take sides in matters of religion and may not endorse a particular religious perspective or any religion at all.

As the Supreme Court ruled in *West Virginia Board of Education v. Barnette* in 1943: "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."

The framers made it difficult to amend the Constitution precisely because of our "checks and balances" form of government. Should the Bill of Rights actually be amended, it will be the first time in American history. And unlike the effort to pass an Equal Rights Amendment, which we supported, the school prayer amendment would remove an existing right, rather than confer a right on an unprotected group.

Proponents of a school prayer amendment claim reintroducing prayer will check the country's "declining moral values." Some, like former Secretary of Education William Bennett blame the 1962 decision, *Engel v. Vitale*, banning official prayer from public schools, for everything from low SAT scores to high teenage pregnancy rates. But many educators and other experts tell us that these problems flow from the enormous and increasing gulf in wealth and opportunity and education, between the richest and poorest people in our society. A one-minute prayer or moment of silence in school everyday will do nothing to change that.

ACLU Department of Public Education/November 17, 1994

How The Law Deals With Religion In The Public Schools

Marc D. Stern and David Harris
The American Jewish Congress
Washington, D.C.

The following is a very brief summary of a comprehensive report by AJCongress, titled "Religion in the Public Schools." Copies of that report, which includes citations for decisions on this topic, are available from AJCongress.

School Prayer. The Supreme Court first held in *Engel v. Vitale* (1962) that the practice of having a prayer recited daily in the classroom, even if non-denominational, is unconstitutional. This holding has been repeatedly reaffirmed, most recently in *Lee v. Weisman* (1992). The prayer at issue in *Engel* was composed by the state. Although the opinion makes it appear as if that fact alone decided the case, subsequent cases have held that all school-sponsored prayers and religious exercises are unconstitutional. That includes, for example, opening exercises consisting of the reading of passages from the Bible, even where participation in such exercises is "voluntary."

This rule against officially-sponsored religious exercises is thus not overcome by requiring students to choose between attending the prayer session or going to another classroom. Nor is it permissible to permit student volunteers to select the prayers for public recitation, either in the classroom or at school assemblies. Lower courts have generally extended the ban on school prayers to include all regular school functions, including assemblies and athletic events. In one case, an appellate court held that a school district could not constitutionally delegate the task of offering prayers at high school football games to the local Ministerial Association. Equally unconstitutional was an "equal access" plan under which student volunteers could recite prayers of their own choosing as part of a pre-game ceremony. Similarly, the common practice of high school coaches leading a team in prayer, or calling upon a team member to do so, is unconstitutional.

Individual students, however, may engage in private, quiet, religious activities, so long as the conduct is not disruptive and does not interfere with the right of others to be left alone. Contrary to what is sometimes said by advocates of prayer in the public schools, the Supreme Court has not prohibited students from reading the Bible, praying, reciting the rosary, or informally discussing religious subjects with classmates. On the contrary, any official interference with such activities would itself be unconstitutional, unless demonstrably necessary to maintain order in the school or to protect the rights of other students. Thus, a teacher may not insist on teaching creationism, or resist teaching evolution, on the theory that evolution is a religious viewpoint. And public school teachers may not pray with, or in the presence of, their students. A teacher who abuses his or her position in this way may be terminated.

The extent to which school authorities may set aside a moment for silent prayer or meditation remains unclear, as courts have continued to send mixed signals in this regard. Moment-of-silence statutes not mentioning prayer will likely be found constitutional. But even if a statute is not unconstitutional as written, it can be implemented in an unconstitutional way, e.g., if students are told to bow their heads or stand for the moment-of-silence, or if a teacher urges that the time be used for prayer.

Teaching About Religion. The Constitution permits objective teaching about religion. In fact, one cannot teach the history of civilization without teaching about religion. Neither can art or music be taught without reference to religion. Objective teaching about religion has given rise to numerous difficulties, among the most intractable of which are those arising from the teaching of "Bible as Literature" classes. It has been suggested, by one court, that only regularly certified public school teachers, not uncertified ministers, can teach such courses. And, at the secondary school level, modern critical Bible scholarship should be included in the curriculum. In short, to pass constitutional muster, any course on the Bible must be devoid of denominational bias.

Public school libraries may include significant religious literature, provided that no one sect's literature is favored, and the library as a whole does not show any preference for religious works. Similarly, the Ten Commandments may not be displayed on classroom walls. Neither may a student painting depicting the crucifixion be left on permanent display in the school auditorium.

Use of Classroom Space For Student-Initiated Religious Activities

Constitutional Claims for Student Religious Clubs. Student religious groups have often requested permission to meet in vacant public school classrooms during school club periods held either before or after school, or, less frequently, during free periods during the school day.

The Supreme Court has held that a public university which allowed secular extracurricular student groups use of empty classrooms could not deny access to student religious groups. Since the university was a limited public forum (a place deliberately set aside for members of the student body to express and exchange views), the university's rule distinguishing between secular and religious groups constituted an impermissible discrimination against speech based on the content of the speech. The Court concluded that the bare granting of access to religious clubs did not amount to the university aiding or endorsing religion. It therefore invalidated the university's rule against the use of its premises by religious clubs.

The lower federal courts have divided on the question of whether this ruling should be applied to elementary and secondary schools. However, this unanswered constitutional question is now of practical import only in those cases in which the Equal Access Act does not apply; that is, in the case of non-elementary and non-secondary schools or during instructional time. Those cases are far less likely to involve limited public forums, and therefore, present a far easier case for excluding religious speech.

The Equal Access Act. The Equal Access Act provides a statutory basis for claims for and against extra-curricular religious clubs. As a result, constitutional claims are now of secondary importance. The Act is a complex piece of legislation. In brief, the Act provides that a secondary school that chooses to allow non-curriculum related student-initiated groups to meet before or after, but apparently not during, the school day may not discriminate against any other student-initiated club based on its philosophic, religious or political content. Thus, the Act confers a right upon all student clubs to meet, but only if school officials permit non-curriculum clubs to meet. Curriculum-related clubs (e.g., the Spanish Club) do not trigger the provisions of the Act. Schools are free under the Act to insist that each meeting be attended by a school employee, who may only maintain order, preserve discipline, protect the rights of other students, or prevent illegal acts.

Teachers' Rights to Hold Religious Meetings. Unless a school permits teachers to use empty classrooms for meetings on whatever topic they choose, teachers have no right to hold religious meetings in an empty public school classroom, before or after school, even when only other teachers will be in attendance. However, teachers may informally discuss religious topics among themselves, provided those discussions do not interfere with their duties and do not take place in the presence of students.

Rental of School Facilities. The question of equal access to student clubs must be distinguished from the question of whether school officials may make school facilities available for after-hours use by religious groups, even if no religious symbols are displayed when the public schools are in session. If broadly available to community groups, school facilities probably must be made available to religious groups on a less-than-permanent basis upon the payment of a fee approximating either the cost of the facilities (heat, light, maintenance) or, perhaps, the fair rental value. At a minimum, religious groups may not be excluded because school officials disapprove of the viewpoint they express.

Holiday Observances In the leading decision on public school celebrations of religious holidays, an appellate court upheld school board rules which permitted the observance of holidays with both a secular and religious basis, provided that the observances were conducted in a "prudent and objective manner." The court was careful to point out that the rules adopted by the school board were, as written, constitutional; however, particular events conducted under the authority of the rules might nevertheless be unconstitutional.

The rules in question permitted the display of religious symbols as teaching aids, and provided that religious works of drama and music could be performed as well as studied. Students who objected to participating in Christmas observances were to be excused. In a similar vein, it has been noted by the Supreme Court that the singing of carols at Christmas time is a common occurrence in the public schools. In general, however, the constitutional problems with public school holiday observances are not cured by observing the holidays of all faiths, although they are exacerbated when the schools observe only the holidays of one faith.

Baccalaureate Services and Graduation. The Supreme Court recently held that school officials may not invite a clergyman to begin or end a graduation ceremony with a prayer, even though the prayer may be non-denominational and even though attendance at graduation is voluntary. One appellate court has held that the graduating students may choose to have a prayer offered, although other courts - and the weight of

authority disagree. Because attendance at baccalaureate services is not compulsory, and frequently takes place away from the public school, some authorities have refused to interfere with the practice.

Official sponsorship of baccalaureate services is impossible to reconcile with the Supreme Court decision mentioned above. Of course, the Constitution does not prohibit a purely private baccalaureate service. Two courts have permitted privately sponsored baccalaureate services to take place in rented public school facilities if appropriate disclaimers of public school involvement are posted. Certainly no student may be compelled to attend such a service, or be penalized for a failure to do so.

Compulsory Attendance and Religious Holidays. School officials are required, by federal statute, to accommodate students' religious practices unless the officials can demonstrate that they have a compelling interest in not doing so.

Two types of conflicts arise from conflicts between the school calendar and religious holidays. The first of these is excusal from compliance with compulsory attendance laws, and is usually covered by a statutory exemption. Where no statutory exemption exists, the student must be excused, at least for a reasonable number of days. However, a policy of excusal must be available equally to members of all faiths. The second problem is whether schools may or must close on religious holidays so as to avoid a conflict with students' religious practices. While public schools need not close on religious holidays, they may do so as a matter of administrative convenience, where, for example, large numbers of teachers or students are absent.

When a school chooses not to close on days observed by some students as religious holidays, conflicts between scheduled events and religious holidays will exist. One court has held that school officials may, without unconstitutionally establishing religion, prohibit the scheduling of extra-curricular activities on Friday night, Saturday and Sunday morning to avoid conflicts with students' religious observances. And another court has held that penalties (such as the refusal to provide make-up examinations or the lowering of grades) cannot be imposed on students absent for religious holidays. A school need not, however, reschedule graduation in order to avoid a conflict with the Sabbath observed by some of the graduates.

Dress Codes. Students may not be compelled to wear gym clothes which, for religious reasons, they consider immodest. Two key decisions on this matter are in conflict as to the appropriate remedy. One Court held that such students must be offered excusal from mixed gym classes in order to avoid exposure to those wearing what they consider to be immodest clothing. The other Court held that, while students themselves must be allowed to dress modestly, they would not be allowed to absent themselves from the class to avoid viewing others dressed immodestly or to avoid ridicule for their chaste dress. Students with religious objections to mixed gym classes, but only such students, may be offered sex-segregated gym classes without violating federal law.

How to Win: A Practical Guide for Defeating the Radical Right in Your Community

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RELIGION: Is There a Place For God in School? As crusaders probe for loopholes in past rulings, the Supreme Court revisits the issue of church and state

TIME Domestic

April 11, 1994 Volume 143, No. 15

By RICHARD N. OSTLING - Reported by Jeff Hooten/Washington

DURING A SINGLE WEEK LAST MONTH in the District of Columbia public schools, two high school students were shot and seriously wounded, another student was stabbed by a sixth-grade girl, an assistant principal was punched in the face, and a policeman was assaulted by students. Mayor Sharon Pratt Kelly responded to the mayhem as big-city mayors often do: she announced plans to post 60 more cops on campus. But her predecessor in the job is convinced that a higher power is required. Ex-mayor and now councilman Marion Barry has proposed a law allowing students to lead nonsectarian classroom prayers. "Maybe, just maybe, it will turn some of our values around," he says. "We've lost our way."

Barry, who served six months in prison for drug possession after leaving office as mayor, might seem a curious proponent of piety, but his campaign is no oddity. Pressed by voters, legislators around the U.S. are probing for loopholes in Supreme Court rulings that have forbidden mandated school prayers along with "moments of silence" to foster praying and clergy prayers at school graduations. These efforts come, moreover, at a time when the court is re-examining a cornerstone of its rulings on church and state: the so-called Lemon test, which has forbidden virtually all government involvement with religion.

The grass-roots campaign to slip prayer back into school is aimed at a chink in the Supreme Court's rulings: the court has never expressly stated whether voluntary student prayers are permissible. A mail campaign spearheaded by TV evangelist and onetime presidential candidate Pat Robertson has sent every high school principal and attorney general in the nation literature urging that such prayers be allowed as an expression of "free speech" and "equal access to the marketplace of ideas." (His organization does not advocate student prayers on school-wide intercoms, the practice that got Mississippi principal Bishop Knox suspended.)

Anxiety over a breakdown in the nation's moral values is fueling much state legislative activity as well. Georgia just enacted a law to permit moments of silence. Student-led prayers have been approved in Mississippi, Arkansas, Tennessee and Virginia. Similar legislation is under consideration in at least six more states. Congress has caught the fever this year as well. Both the Senate and House passed measures that would strip funds from schools that forbid "voluntary" prayer. Final action on prayer legislation is expected this spring.

The American Civil Liberties Union has vowed to challenge the constitutionality of these new laws. Representative Don Edwards, a California Democrat, argues that student prayer is not really voluntary and amounts to "manipulation by churches and parents." He points to numerous lower-court decisions against such praying.

A pending high-court decision could change the landscape significantly. It revolves around the 1971 Lemon ruling, which bars tax support for salaries and secular textbooks in religious day schools. The decision set up a three-part test to determine whether a government action is an unconstitutional infringement of church-state separation: an action must have a "secular legislative purpose," avoid "excessive government entanglement with religion" and have a "primary effect" that "neither advances nor inhibits religion."

Many legal experts and religious leaders feel that the Lemon test is at best confusing, at worst unfair, and in any event destined to change. The current challenge has come in the case of Kiryas Joel v. Grumet. Kiryas Joel is a municipality in upstate New York where virtually all citizens are in the Satmar sect of Hasidic Orthodox Jewry. Kiryas Joel adheres rigidly to Old World dress and ways and maintains a close-knit, Yiddish-speaking community that tries to shield itself from outside influences. TV, movies and even higher education are shunned.

The children in town attend religious day schools with no government support. The dispute centers on the town's handicapped youngsters. They used to be trained by public school teachers at an annex to a religious school; then, in 1985, the Supreme Court decided that Lemon forbids such cooperation. After busing the handicapped kids to an existing public school for several years, the Satmar parents, seeking to shield the children from harassment, set up their own local public school, where costly special education is made possible by state and federal aid.

Kiryas Joel says its public school for the handicapped operates in a strictly nonsectarian fashion. Opponents, led by Louis Grumet, executive director of the New York State School Boards Association, do

not argue that point. But they say Lemon forbids the very existence of a school set up by the state legislature specifically to help a religious community and perpetuate its life-style. New York's highest court outlawed the school because it creates a "symbolic union" between religion and the state. The Supreme Court last week heard arguments in Kiryas Joel's appeal.

Some scholars believe the time is ripe for the Lemon test to be modified or overturned. Four Supreme Court Justices have soured on Lemon. Two prominent legal experts who filed "friend of the court" briefs expressed dissatisfaction with Lemon: Michael McConnell of the University of Chicago, backing the Satmars on behalf of Evangelical Protestants, and Douglas Laycock of the University of Texas, opposing the Satmars on behalf of the more liberal National Council of Churches.

McConnell and Laycock assert that Lemon's "primary-effect" criterion (the one used to outlaw the Kiryas Joel school) is too fuzzy and has been misused to deny religious Americans rights that are automatically granted to others. The Supreme Court has already overruled lower courts that used the primary-effect criterion to outlaw voluntary religious clubs in public schools, rental of public schools to churches on the same basis as other community groups, and help for blind and deaf students attending religious schools.

McConnell advocates what he calls "substantive neutrality," in which courts would allow government to accommodate religious activity if its policy is "religion-blind" and does not "induce or favor" belief. Laycock, observing that "it is rarely possible for government to achieve absolutely no effect on religion," argues that to find neutrality, courts should balance the benefit to religion stemming from a government action, against the repression of belief that would result if government did the opposite.

The attorney who argued for the Satmars, Nathan Lewin, contends that the Supreme Court will ultimately have to decide: "Is religion a positive force in American society, or is it a menace?" His opponent, educator Grumet, asserts that if the court decides in the Satmars' favor, "the entire underpinning of the public school system would be undermined." Harvard law professor Alan Dershowitz, a strong supporter of church-state separation, is uncharacteristically ambivalent on Kiryas Joel. "It's a close case," he says. Close, and for the always delicate relations between church and state, potentially momentous.

Essay: Let Us Pray

TIME Domestic

December 19, 1994 Volume 144, No. 25

BY RICHARD BROOKHISER

When speaker-to-be Newt Gingrich announced that one of the priorities of the emerged Republican majority would be school prayer, wise men shook their heads; the G.O.P. was making the same mistake Bill Clinton had when he began his transition by pushing for gays in the military.

Bill Clinton should have been so lucky. Allowing prayer in schools is as popular as allowing gays in the military was not. Hardly a semester passes without some school principal or state legislature trying to smuggle it back in, past the baleful eye of the A.C.L.U. and its postulants on the bench. The 1962 Supreme Court decision that banished prayer from public school classrooms is one of the most unpopular the court has handed down, and surely the only one that unites Newt Gingrich and D.C. mayor-elect Marion Barry.

It is also one of the court's most whimsical decisions - a policy preference of mid-20th century liberals disguised as constitutional fundamentalism. It's a good thing the Justices who endorsed it were not around in 1789, or they would have ruled that the day of "public thanksgiving and prayer" that had been proclaimed that October was an establishment of religion too. The House of Representatives of the First Congress called for the day of thanksgiving the day after it passed the First Amendment, which prohibited any establishment of religion.

But something may be popular and legal without being desirable. An atheist desires public prayer no more than he enjoys the currency and the national anthem, with their affirmations of trust in God. Though some of the original suits against school prayer were supported by atheists, the big numbers against it have always come from religious Americans suspicious of another religion's power plays: Jews fearful of a Christian nation, and liberal Christians fearful of the same thing.

There are also conservative arguments against public school prayer. The practical counterargument is that it would buy time for the public school system. One of the great engines of disenchantment with the way bureaucrats instruct children is the religious right, for which Johnny's inability to pray and to read are linked. Returning prayer to public schools might deflect conservative evangelicals from the campaign against the education establishment. Evangelists for school choice don't want the public school system to get better; they want it to get worse, as a prelude to getting out of it and into private schools. To them the push for prayer is like asking the band of the Titanic to strike up Nearer, My God, to Thee.

How meaningful would the prayers be, anyway? Religious opponents of school prayer fear petitions that would be content-free. As Christian libertarian Doug Bandow puts it, "Formalistic rituals teach an empty spirituality devoid of meaning." Is there any reason to think the pedagogues who once gave kids George Washington and the cherry tree and who now give them Crispus Attucks and other patriots of color would do any better at framing appeals to the Almighty?

These arguments melt before the case for school prayer, which is historical and political. The Founders knew that religion should be left to believers. They invoked God not to instruct Americans about theology, but to remind them about the nature of liberty.

The first Thanksgiving Proclamation, issued by President Washington, asserts that "it is the duty of all Nations to acknowledge the providence of Almighty God." The U.S., however, had special reasons to be thankful: "for the signal and manifold mercies . . . in the course and conclusion of the late war"; "for the peaceable and rational manner in which we have been enabled to establish constitutions"; and "for the civil and religious liberty with which we are blessed." Men fight and plan for liberty, but they do not decree it. God does that. The Thanksgiving Proclamation echoed, in workaday language, the assertion of the Declaration of Independence that rights are the Creator's endowment.

Men have imagined other sources for their rights besides the Almighty. The Declaration mentions "the Laws of Nature." But it immediately adds, ". . . and of Nature's God." Wisely so. The past 200 years have shown that nature is a distressingly malleable concept. It is a philosopher's parlor trick to collapse it into history (nature in time) or will (nature in us). When such philosophies seeped into politics, they spawned communism and Nazism. It is also true that God - and various gods - has covered a multitude of political sins over the millennia. But in the modern world, rights fare best when they are derived from a Source men fear to tamper with.

Will it do little hellions any good to be exposed to such sentiments in homeroom? Maybe not. Congress begins each day with a prayer, and look how it behaves. But a society should know where the

things it holds dear come from, and why there are limits to its own actions. School is one place to learn such things, and one way of learning is to repeat the lesson daily.

Chapter 2 Right to Bear Arms

GUN CONTROL: Inside the N.R.A.

TIME Domestic

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GO AHEAD, MAKE OUR DAY

The N.R.A. suffers a public backlash for its extremism, but that is precisely the source of its newfound strength

Ray Guzman is just the sort of person you'd trust with a gun. Three years ago, after buying a weekend home in the Endless Mountains of Pennsylvania, Guzman decided to take up hunting. But before he bought his 12-gauge Remington shotgun, he enrolled in a National Rifle Association safety course. "I didn't want to be a hypocrite as a firearm owner who doesn't practice firearm safety," he said. But now Guzman, 41, a sign-shop owner, is thinking of quitting the organization. While he supports the N.R.A.'s education programs, he is disturbed that in the midst of public anxiety about antigovernment violence, the N.R.A. is plowing ahead with its campaign to repeal the federal ban on assault weapons. And he takes issue with the N.R.A. fund-raising letter that called federal officials "jackbooted government thugs," the language that prompted former President Bush to quit the N.R.A. "George Bush has really opened my eyes," says Guzman. "The N.R.A. is too much to the right."

David Dunklee, on the other hand, feels a renewed pride in the N.R.A. now that its focus has shifted from sporting issues to a zealous defense of gun ownership. Like many N.R.A. members, he fears that the citizenry's right to bear arms has been sorely challenged by such incidents as the 1993 federal raid on the Branch Davidian compound in Waco, Texas, and the 1992 standoff between Randy Weaver and federal agents at Ruby Ridge in Idaho. "There should be more investigation. The government needs to explain itself more fully," says Dunklee, a range instructor in Phoenix, Arizona. He has been an N.R.A. member since 1989, but only recently felt passionate enough to pay \$500 for a lifetime membership. "If you can't protect yourself and the police can't either," he says, "then you're in trouble."

On the surface, the N.R.A. would appear to be the one in trouble, with its house divided, its behavior widely condemned, its membership perceived as kooky, its legislative agenda upended by such defeats as the Brady Bill and the assault-weapons ban. But in fact the N.R.A. is making a powerful comeback, as a more militant organization. While it has increasingly alienated a majority of America's gun owners, not to mention the public at large, the N.R.A. has attracted a more radical following that is willing to give money and work vigorously toward the organization's goals.

Armed with an increasingly combative message that posits a tyrannical government as its main adversary, the 124-year-old organization is at peak power. Annual revenues for 1994 stood at \$148 million, up 16% over the prior year, and membership has surged to a record 3.5 million members. "That's twice as many as the Christian Coalition," boasts Arizona sheriff Richard Mack. At the same time, the N.R.A. has developed a grass-roots network of political activists that, at a time of low voter turnout, is inspiring a new level of fear on Capitol Hill. "We have a political system that rewards intensity," says Thomas Mann of the Brookings Institution. "The only way you overcome that is to match their intensity with an intensity among those on the other side, and in the gun debate that has not happened."

The N.R.A.'s enhanced clout is largely the work of a militant elite within the N.R.A.'s 76-member board, most notably second vice president Neal Knox and chief lobbyist Tanya Metaksa, who cheerfully helps those who have trouble spelling her name: "It's 'ak' as in AK-47, and 'sa' as in semiautomatic." To foment a crisis atmosphere, this new breed of leaders has pushed the N.R.A. toward extreme, uncompromising positions, such as its defense of cop-killer bullets and denunciation of efforts to mark explosives for ready identification. As inflexible in their interpretation of the Second Amendment as Christian Fundamentalists are in their reading of the Bible, the militants trumpet each political and legislative setback as a potentially lethal assault on the right to bear arms.

It has proved a winning strategy. The largest membership surges followed two legislative defeats: the 1993 Brady Bill, which imposed a five-day waiting period on the purchase of handguns, and the 1994 ban on 19 categories of assault weapons. "The N.R.A. has been predicting imminent doom and practically the elimination of weapons for years," says Robert Spitzer, author of *The Politics of Gun Control*. "Now there was a real threat that provided a galvanizing force for opposition, and that helped pump up their membership."

The tough-as-bullets strategy was in evidence again last week in Phoenix, where 20,000 of the faithful converged for the N.R.A.'s annual convention and gun show. This time the N.R.A. was under siege for strident rhetoric that seemed grossly insensitive in the aftermath of the Oklahoma City bombing. While

Bush's resignation prompted N.R.A. executive vice president Wayne LaPierre to issue a qualified apology for his inflammatory language in the March fund-raising letter, the N.R.A. was largely unabashed. Knox dismissed Bush's action as "a petty political payback because we didn't endorse him in 1992." Among the rank and file, the reaction was downright glee and a scramble for Bush's membership number. "My phones have been ringing off the wall," gloated field representative H. Dean Hall. "The best was the gal who said, 'I don't even own a gun, but I want to take George Bush's place.'"

Members openly scoffed at two blistering statements from President Clinton last week, one of which demanded that the N.R.A. "put the money where their mouth is" and contribute the "ill-gotten gains" from the fund-raising letter, estimated at \$1 million, to a police benevolent fund. In a Saturday session of its convention, N.R.A. president Tom Washington ridiculed Clinton, drawing laughs with the comment: "If you know me at all, you know how deeply hurt and even offended I am that Bill Clinton may not like us very much." Still, the N.R.A. was feeling Clinton's heat. LaPierre defensively pounded the message that "we do not do battle with bullets; we fight with ballots." And he warned, "The eyes of history are upon us. Be worthy of the scrutiny."

In the N.R.A.'s new realm of conspiracy theories, attacks like Clinton's serve only to spur growth. "Bill Clinton is the best recruiting tool we've got," says Ronald Phillips, chief of the N.R.A.'s Colorado unit. If a state of siege is good for the N.R.A., things only got better last week. The Secret Service barred the N.R.A. from participating in its annual shooting competition, and the International Association of Chiefs of Police decided to ban N.R.A. ads from its monthly magazine, *Police Chief*. "We are outraged at the N.R.A.'s repeated, slanderous rhetoric against federal agents," says John Whetsel, the group's president. "Such attacks cannot help but suggest that the N.R.A. leadership is anti-law enforcement."

Indeed the N.R.A. has drifted far from the center of the group it purports to represent. In a TIME/CNN poll of 600 gun owners last week, 68% disapproved of the harsh language used in the March fund-raising letter. Only 47% said they support N.R.A. positions in general, down sharply from 67% in a similar TIME/CNN poll in 1989. Only 24% of gun owners in the current poll support the N.R.A.'s No. 1 legislative agenda, a repeal of the 1994 assault-weapons ban. The N.R.A.'s other pet project, a campaign for congressional hearings on the alleged abuses by the Bureau of Alcohol, Tobacco and Firearms during the Waco raid, also garnered little sympathy. Fifty-two percent of gun owners felt the invasion of the Branch Davidian compound was justified; just 27% thought the Davidians should have been left alone.

Despite such wan support among gun owners, the N.R.A. may well get its way on both counts--just not as soon as its leaders had hoped. While Knox predicted last week that the assault-weapons ban will be altered by Congress this year, the greater likelihood is that both chambers, mindful of public skittishness following the Oklahoma City blast, will postpone any vote until next year. That delay, however, may work to the N.R.A.'s advantage by giving the group more time to muster votes.

As for an investigation of alleged ATF abuses, two House subcommittees have agreed to hold a joint hearing by early summer. A G.O.P. House staff member says the decision was motivated by an outpouring of letters from citizens angered by the events in Waco. New York Democrat Charles Schumer, who has unsuccessfully tried instead to steer the House Judiciary Committee toward hearings on citizens' militias, counters, "If there were no N.R.A., there'd be no [Waco] hearings." Meanwhile, in the Senate, the Judiciary Committee has put off a Waco hearing, but the N.R.A. has allies championing its cause. "I think it's important to hold hearings," says Max Baucus, a Montana Democrat. "Let people say what they think. It's cathartic. Someone might learn something."

As the N.R.A. moves farther from the center, its political gravity only becomes stronger. At a time when the group has "lost some element of respectability in polite company," as analyst Mann puts it, presidential candidate Phil Gramm was on hand at the Phoenix convention last week to deliver the keynote address. Such clout has ensured that no piece of gun-control legislation will be passed by the current Congress. Then there is the eagerness of legislators like Baucus, who crossed the N.R.A. when he voted for the assault-weapons ban and now wants to make amends. Given the uncompromising brand of politics played by the N.R.A., Baucus knows he will face an upward battle in 1996 to secure a fourth term. Says author Spitzer: "The N.R.A. can make life so unpleasant that key public figures will yield to them because fighting them is more of a hassle than it's worth."

Clinton's assessment of the N.R.A.'s influence is even more dire. After the Democratic bloodbath in the '94 elections, he told the Cleveland Plain Dealer, "The N.R.A. is the reason the Republicans control the House." In that election, according to the Center for Responsive Politics, the N.R.A.'s political-action committee funneled nearly \$1.9 million directly into campaign coffers and poured another \$1.5 million of N.R.A. money into commercials, direct mailings and phone banks. The upshot: an estimated 32 incumbent House supporters of gun control lost their seats. The N.R.A.'s outlays not only represented a trebling of its

political expenditures since 1990 but also showed a pronounced rightward tilt. Whereas in 1990 Democrats benefited from 39% of the N.R.A. pie, by '94 their share was down to 18%.

In its campaign work, the N.R.A. has become expert at brutal opposition tactics. Oklahoma Democrat Mike Synar was bumped from his House seat in the primary by what he calls a "stealth campaign," which did indeed mirror the stealth tactics of the religious right. The N.R.A. not only sent several operatives into the Congressman's Muskogee district to make sure opponents' campaigns were professionally run but also, Synar charges, trained and dispatched supporters to "stalk" him and interrupt his public meetings with rude questions. "Their idea was to keep the turnout low, then make sure their vote got out." In the end, he says, among the 21% voter turnout, perhaps half were N.R.A. sympathizers.

Conversely, the N.R.A.'s attempt to salvage the imperiled seat of Texas Democrat Jack Brooks, a veteran N.R.A. supporter, met with defeat--ironically, at the hands of its grass-roots membership. Brooks, as chairman of the House Judiciary Committee, was perceived by N.R.A. leaders as a valuable gatekeeper for key legislation. But when Brooks voted for Clinton's crime bill, which included the assault-weapons ban, local N.R.A. members demanded that the endorsement be withdrawn. The N.R.A. dispatched no less a figure than Metaksa to argue Brooks' cause. But the local citizenry refused to fall into line, instead electing N.R.A. sympathizer Steve Stockman, who supports the militia movement as well. The N.R.A. leadership now cites the Brooks-Stockman episode to counter criticisms that the N.R.A. is a top-down organization whose actions are dictated from its new \$15 million headquarters in Fairfax, Virginia. "When you have 3.5 million members," contends president Washington, "you have people of every persuasion."

Still, there is a sense that the N.R.A. is being propelled rightward by a tiny elite. Critics charge that this cadre has seized power by capitalizing on the N.R.A.'s poor internal voter turnout. Though some 33% of members are eligible to vote, just 7% cast ballots. N.R.A. leaders went to great lengths last week in Phoenix to deny any serious rupture within the board. And despite speculation that hard-liners Knox and Metaksa might try to wrest control of the board from the somewhat more moderate helmsmanship of Washington and LaPierre, no putsch transpired. "The N.R.A. plays political games hard, inside and outside, but we are like a big family," says Knox. "Woe be unto you if you say something bad about our mama. We circle the wagons."

The circling was also tight among the N.R.A. members who felt enough devotion to lay down good money to attend the five-day conference in Phoenix. While many members allowed that the N.R.A. leadership's rhetoric was over the top, many also strongly perceive a government campaign to strip them of the ability to defend themselves. "That final loss of all weapons is a real fear for a lot of us," says Phillips of the Colorado N.R.A. "We've heard federal people talk about the disarming of America, and we'll take them at their word." They firmly adhere to the slippery-slope argument as well. With that disarming, they fear, all freedoms will be lost. "Guns are the clearly identifiable issue," says Bill Hiort, a lifetime member from Sycamore, Illinois. "But they're just one example of the intrusion of government into all aspects of life."

Across the U.S., far from the convention's fervor, many N.R.A. members seem to shrug off the group's excesses as tactics that are excusable given the importance of the mission. "The N.R.A., whatever its faults, is still the best thing gun owners have," says Scott Carter, a 20-year member who manages a gun shop in Warrenton, Virginia. "Their past efforts and their future efforts to keep firearms in the hands of law-abiding citizens will do more to save this country than anything else." As for those members who feel that the N.R.A. has abandoned the interests of target shooters and hunters, says Hefner Appling, a longtime N.R.A. member in Texas, "That's just what the N.R.A.'s enemies like to say."

Such talk leaves little space for people like Dave Richards, 37, of Bloomfield Hills, Michigan, a target shooter who joined the N.R.A. to support the rights of sportsmen. Two years ago, Richards quit after concluding that the N.R.A. had become "more about lobbying for extremes than the mainstream people who just want to go hunting." A large number of those mainstream folks are now ex-members. Currently, four of every 10 members drop out when it comes time to renew their \$35 annual membership. "All the smaller voices like mine," says hunter Ray Guzman, "aren't being heard." Speaking with a louder, shriller voice clearly works within the N.R.A. The question is whether America's other citizens, including responsible gun owners, will make themselves heard as well.

Reported by Jeffrey H. Birnbaum and Nina Burleigh/Washington, S.C. Gwynne/Austin, Elaine Shannon and Richard Woodbury/Phoenix and David Seideman/New York

GUN CONTROL: LICENSE TO CONCEAL

TIME Domestic

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Barely putting up a fight, the states are giving in to new legislation as citizens clamor for the right to bear arms

BY DAVID VAN BIEMA

It became obvious pretty quickly to John Wesley Anderson that there were not enough blue forms. Not by a long shot. Four weeks ago, Anderson, sheriff of peaceful El Paso County, in the shadow of Colorado's Pikes Peak, made good on a November campaign promise and adopted the most lenient standards in the state for the carrying of concealed weapons. Any citizen with a clean felony record who returned the blue form with an \$85 check stood a decent chance of being allowed to carry a gun, without having to train in its use or even explain why he or she needed it. Anderson expected to hear from people; in anticipation, he had 1,000 five-page application forms printed. He thought the supply would last a couple of years.

He was wrong. The applications disappeared within 48 hours. Anderson went back to the printer; people lined up outside his office and waited. By last week he had handed out 4,000 forms; 1,800 had already been completed and returned. His deputy, James Groth, sat in a room surrounded by them, furiously processing, with no end in sight. "My family has almost forgotten what I look like," Groth said. A bemused hostage to his fellow citizens' need to pack clandestine heat, Groth has been taken somewhat by surprise.

If the passage of the Brady Law and assault-weapons ban made 1994 a banner year for the forces of gun control, 1995 is quickly shaping up as the year of the Great Rollback. With one eye cocked at next year's presidential race, Senate majority leader Robert Dole pledged last week to undo the assault-weapons ban by this summer. So far this year, three states (Virginia, Arkansas and Utah) have joined the four states that loosened restrictions on CCW (carrying concealed weapons) permits last year. Legislation is pending or awaiting gubernatorial signature in 16 states. In Texas last Wednesday the state senate passed a ccw liberalization measure by a vote of 23 to 7. And soon John Wesley Anderson's permit forms in Colorado may be outmoded: this week the Denver legislature plans to consider a lenient limit on concealed guns. "It's a tidal wave," says a delighted Tanya K. Metaksa, head lobbyist for the National Rifle Association.

Nomenclature can obscure the magnitude of this change. When people talk of allowing concealed weapons, there is a tendency to imagine legions of citizens who had previously carried their Smith & Wessons on their hips gratefully slipping them into a coat pocket. But since half the states flatly ban carrying an exposed weapon (and the practice attracts unwanted attention everywhere), restrictions on concealment are effectively restrictions on almost any carrying of handguns outside the home. As the states change their ccw laws, citizens may have to endure background checks and waiting periods to procure their handguns, but most will also be able to remove them from their dresser drawers and carry them on a car seat, on strolls to their children's soccer practices or even (unless the pastor objects) to church.

The U.S. has never had a unified policy on who can and cannot carry a weapon outside the home. Observers separate the states' positions into three broad groups. At present, 23 are lenient (Vermont especially so); 11 make gun toting almost impossible; and the remaining 16, which include many of those currently considering a change, give out ccws to civilians on the basis of a "compelling need," such as a documented threat against them or a dangerous job. Often, need is determined by local judges or police, who can be stingy or play favorites. From 1972 to 1992, for instance, the Los Angeles police department awarded one civilian permit - to incoming police commissioner Willie Williams, before he was sworn in as an officer. In New York City, says N.R.A. spokesman Bill Powers, "Donald Trump has one. But you or I? The judges say no."

The new initiatives would replace that local discretion with uniform - and often more lenient - standards. The proposed Texas rule, for instance, requires applicants to be 21 or over, possess a police record clean of felonies and take 10 to 15 hours of training in the specific caliber of their favored weapons. In addition, the citizen must disarm before entering government offices, sporting events, polling places and private homes or businesses whose owners object. (This last is controversial: the Houston Chronicle quotes a worried citizen as saying, "Let's face it: if you can't carry a concealed weapon into an all-night grocery, what good is it?")

The forces propelling the change range from boringly bureaucratic to blatantly political to high American paranoid. Part of the impetus is the simple desire for clarity. Under the current Texas rules, for

instance, if you cross only one county line with your weapon, you're risking a year in jail and a \$4,000 fine; cross two (and muddy the jurisdictional situation), and you're likely to get off free.

The CCW rebellion also has fomenters with deep pockets. Susan Whitmore, a spokeswoman for Sarah Brady's Handgun Control, Inc., says, "this is all being driven by the gun lobby." N.R.A. lobbyist Metaksa does not exactly deny the charge; she admits that many liberalization campaigns are "coordinated" out of her organization's Washington-area office and notes that the N.R.A. (which spent some \$4 million in the 1994 election) not only saw 80% of its congressional favorites elected; it also scored 85% on the state level. "Many state legislatures got changed," she explains, "and now ((they)) are listening to their constituents." Or to her. In Texas, where the n.r.a. has run a letter-writing campaign for liberalization, fear has probably swayed some yea votes. Says Bruce Elfant, constable for Travis County and an opponent of liberalization: "It is not so much the money as the threat that they will go after people who oppose them." That threat carries weight: last year the organization was credited with toppling legendary Representative Jack Brooks when he defied them to vote for the Clinton crime bill.

Yet Marion ("Sandy") Sanford, a respected and putatively neutral Austin lobbyist, says, "This is not the N.R.A.; this is spontaneous combustion" - fueled by the same dread that has stoked the success of death-penalty campaigns and "Three strikes and you're in." The desire for self-preservation in the face of an increase in random violence and understaffed police forces can express itself, without paradox, in both an assault-weapons ban and in the desire to pack one's own handgun. Says Gary Huttenhoff, a real estate appraiser who has just picked up his laminated wallet-size permit from Sheriff Anderson's office in El Paso County: "The police take care of the public, not the individual. This is a great chance for people to defend themselves." One of the most potent advocates in the Texas debate has been Suzanna Gratia, who watched helplessly as a deranged gunman executed 23 people - including her parents - at a cafeteria in the town of Killeen four years ago. At the time, Gratia's own .38-cal. was lying in the trunk of her car because she was obeying the current concealed-weapons law, "the stupidest mistake of my entire life."

Can other Americans take a lesson from her tragedy? The question harks back to the classic gun-control debate. "ccw permits are not the answer," says Whitmore. "They give you a false sense of security." She argues that the regrets of people like Gratia are outweighed by the regrets of those who had guns but found themselves outdrawn. And certainly Whitmore would be right to distinguish a tinge of the overheated in another of Anderson's satisfied customers, retiree Bob Chadwick. "I won't come downtown much anymore," he says, grabbing an application for his .44-cal. Magnum. "It's a jungle, and it's spreading. I don't want to become a victim." A national survey recently rated Chadwick's "jungle," Colorado Springs, America's 13th safest city.

Yet if the fevered fantasies of gun owners seem overdrawn, so, apparently, are those of the control advocates. In 1986, when Florida initiated the current wave of liberalization, critics predicted deadly traffic squabbles and cross fire at the mall. That proved mistaken. Since 1987 more than 266,700 Floridians have been granted concealed-weapons permits; of those, only 19 have had them revoked for firearms-related crime. Since the CCW laws were relaxed, Florida's homicide rate has decreased 29%.

That last, striking statistic has turned into an N.R.A. rallying cry. Thrown on the defensive, Handgun Control has countered that Florida's rate for all violent crime went up 18% during the same period. And last week the University of Maryland released contradictory numbers: it reported three Florida cities as having experienced rises in gun homicides since 1986, ranging from 3% (Miami) to 74% (Jacksonville).

James T. Moore, commissioner of the Florida Department of Law Enforcement, says he has his doubts about the Maryland figures. Yet he also refuses to credit the homicide drop to liberalization. There are too many other variables, from tourism to weather to immigration. (He might well add the 1991 adoption of Brady-type gun-purchase rules, or the fact that many of the homicidal do not bother with gun permits.) "You can't make an informed opinion one way or another," he concludes.

Back in El Paso County, not everybody is thrilled with John Anderson's new policy. Police Lieutenant Alan Scott of Colorado Springs is worried that "now people will substitute their own deadly force for diplomacy or for calling the police. If a dispute breaks out, will people now use the same discretion that they did before guns?" He ponders all the gun training he and his colleagues have undergone in order to wear the badge. "And if we ((still)) make mistakes," he asks, gesturing in the general direction of the new permit owners, "how about them?"

Reported by Sam Allis/Boston, Greg Aunapu/Miami and

Guest editorial by Dr. Suzanna Gratia, Martha Hayden,

Mikey Voorhees and Marion Hammer.

On Oct. 16, 1991, in Killeen, Texas, an armed homicidal maniac methodically killed 22 people and then himself, facing no resistance from the scores of potential victims including Dr. Suzanna Gratia. Dr. Gratia was dining with her parents when the assailant began his shooting spree. She had left her pistol in the car because Texas law prohibits law-abiding citizens the right to carry firearms for personal protection. On numerous occasions during the massacre the killer had his back turned to her, even pausing to reload. Helpless, she could only watch as 22 people, including her parents, were killed.

For too long now, law-abiding Americans have been so caught-up in just trying to keep their guns that the option of carrying these guns for personal protection seemed a distant dream. Until now. About a third of the states grant law-abiding citizens the right to carry firearms for personal protection. Most of the states require some type of training and a permit. Vermont, which has one of the lowest crime rates in the nation, requires no permit at all.

The critics of the right to carry argue that law-abiding citizens can't be trusted, they are neither intelligent enough to choose for themselves nor responsible enough to avoid shooting a stranger over a minor traffic dispute. But the facts speak for themselves: none of the horror stories have ever materialized in any state that has enacted a fair permit system.

Martha Hayden pulled up to the apartment in Dallas in her car. What she didn't know was that she was being followed. As she locked her car and proceeded across the street, an assailant appeared out of nowhere and pulled a gun on her. The attacker robbed her and then pistol-whipped her. He had other plans. She tossed her purse in the yard and as the assailant went to retrieve the purse she ran and hid in the bushes. A neighbor who heard her screams called the police. Ms. Hayden needed 300 stitches.

In the states that have trusted their citizens with the right to carry, the statistics are overwhelmingly in favor of the law-abiding. But that shouldn't come as any surprise. The American gun owner has long proven to be extremely responsible.

The state of Florida is a good example of how government and citizens can work together to protect civil rights and reduce crime. In 1987, Florida enacted its right to carry legislation. The critics predicted doomsday. Prematurely, Florida was dubbed the "gunshine" state. Now, however, the newspapers and the political detractors have been forced to eat their words. State Senator Ron Silver, who originally opposed the legislation, recently concluded, "I am pleasantly surprised to find out that its working pretty well." Senator Silver shouldn't have been surprised. As John Russi, Director, Florida Division of Licensing pointed out in the same interview, "You need to keep in mind, that most people that obtain [permits] are for legitimate purpose[s] and they're not the people committing crimes. People that commit crimes are crooks and are not going to obtain a concealed weapons license." Between October of 1987 and November of 1994, 266,607 permits were granted. Of those, only 18 or 0.00675% have been revoked because of a firearms infraction.

Late one night Marion Hammer, a grandmother living in Florida, was followed into a parking garage by 6 men in a car, shouting obscenities and threatening to rape and assault her. Ms. Hammer possessed a firearms carry permit, and when the would-be assailants cornered her in the garage, she reached in her purse and pulled out her handgun. When she aimed the gun at the vehicle one occupant shouted that the [expletive] has a gun and the driver threw the car into reverse and sped out of the garage. There is no doubt in Ms. Hammer's mind that her right to defend herself with a firearm saved her life.

As crime rises and police department resources become stretched to their limit, the need for the right to carry has become critical for many Americans. Not only are police resources inadequate in many parts of the nation, police departments have no duty to provide protection to individuals. In the District of Columbia, three women were raped, beaten, robbed and held captive for fourteen hours -- fourteen hours after the initial phone call to 911 asking for police assistance. The women sued the District of Columbia, but the court ruled in *Warren v District of Columbia*: "a fundamental principle of American law [is] that a government and its agents are under no general duty to provide public services, such as police protection, to any individual citizen."

Mikey Voorhees was on a family outing, a hunting trip to the Guadalupe Mountains, with her husband and son. One morning while the father and son had left camp to hunt, Mikey thought it would be a good time to practice shooting with a new pistol her husband had bought her. She went into her tent and strapped on the .380 Llama before she finished some morning chores. A short time later a station wagon came up the trail and into camp. Out of the station wagon climbed eight men who were either drunk or on

drugs. As the men approached her, they were shouting obscenities and telling her exactly what they planned on doing to her, Mikey stepped from behind the camp stove with her hand on her firearm. The men froze instantly in their tracks and retreated so quickly to the car that the driver started to drive away before they had all gotten back into the car.

People who carry firearms for personal protection often find themselves reluctant heroes. On Dec 17, 1991, in Anniston, Alabama, two armed robbers with recently stolen pistols herded 20 employees of a Shoney's restaurant into the walk-in refrigerator. What the armed intruders didn't count on was an armed citizen. Thomas Glen Terry was hiding under a table and when the opportunity presented itself he confronted the assailants, killing one and critically wounding the other. Terry had a permit to carry because the state of Alabama believes, as Thomas Jefferson once said, that "Laws that forbid the carrying of arms... disarm only those who are neither inclined nor determined to commit crimes... Such laws make things worse for the assaulted and better for the assailants; they serve rather to encourage than to prevent homicides, for an unarmed man may be attacked with greater confidence than an armed man."

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This information is presented as a service to the Internet community by the NRA/ILA. Many files are available via anonymous ftp from [ftp.nra.org](ftp://ftp.nra.org), via WWW at <http://www.nra.org>, via gopher at [gopher.nra.org](gopher://gopher.nra.org), and via WAIS at [wais.nra.org](wais://wais.nra.org)

Chapter 3 Freedom of Expression

Bill of Rights BICENTENNIAL

FREEDOM OF EXPRESSION

The inhabitants of the North American colonies did not have a legal right to express opposition to the British government that ruled them. Nonetheless, throughout the late 1700s, these early Americans did voice their discontent with the Crown. For example, they strongly denounced the British parliament's enactment of a series of tax levies to pay off a large national debt that England incurred in its Seven Years War with France. In newspaper articles, pamphlets and through boycotts, the colonists raised what would become their battle cry: "No taxation without representation!" And in 1773, the people of the Massachusetts Bay Colony demonstrated their outrage at the tax on tea in a dramatic act of civil disobedience: the Boston Tea Party.

The colonists also frequently criticized the much-despised local representatives of the Crown. But they protested at their peril, for the English common law doctrine of "seditious libel" had been incorporated into the law of the American colonies. That doctrine permitted prosecution for "false, scandalous and malicious writing" that had "the intent to defame or to bring into contempt or disrepute" a private party or the government. Moreover, the law did not even accommodate the truth as a defense: In 15th century England, where absolute obedience to the Crown was considered essential to public safety, to call the king a fool or predict his demise was a crime punishable by death.

The colonies' most celebrated seditious libel prosecution was that of John Peter Zenger in 1735. Zenger, publisher of the *New York Weekly Journal*, had printed a series of scathing criticisms of New York's colonial governor. Although the law was against Zenger, a jury found him not guilty -- in effect, nullifying the law and expressing both the jurors' contempt for British rule and their support for a free and unfettered press. After Zenger's acquittal, the British authorities abandoned seditious libel prosecutions in the colonies, having concluded that such prosecutions were no longer an effective tool of repression. The stage was set for the birth of the First Amendment, which formally recognized the natural and inalienable right of Americans to think and speak freely: "Congress shall make no law...abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Following are the ACLU's answers to questions we have been asked by members of the public about the history of the First Amendment and the freedoms it guarantees.

What were the philosophical underpinnings of the First Amendment's guarantees?

James Madison, Thomas Jefferson and the other framers of the Bill of Rights were products of the Age of Enlightenment. They eschewed the superstitions and intolerance of earlier times, believing instead in the power of reason, the search for truth, and the perfectibility of human society. Freedom of inquiry and liberty of expression were clearly essential to the process of debate and discovery that they viewed as indispensable to the achievement of human progress.

Questioning of authority was also a central theme of the Enlightenment era. The philosophers of the day well understood the tendency of government to perpetuate itself by enacting repressive measures to silence those opposed to its conduct. According to one libertarian thinker of the period, a citizen had the right to "say everything which his passions suggest; he may employ all his time, and all his talents...to do so, in speaking against the government matters that are false, scandalous and malicious," and yet he should be "safe within the sanctuary of the press." Speech was regarded as beyond the reach of criminal sanctions; only "overt acts" could be punished.

Given the primacy that the framers assigned to the values the First Amendment embodies, it is fitting that freedom of expression should be the first freedom cited in the Bill of Rights.

Why does freedom of expression play such a critical role in our constitutional system?

There are four primary reasons why freedom of expression, which encompasses speech, the press, assembly and petition, is essential to a free society: First, freedom of expression is the foundation of self-fulfillment. Self-expression enables an individual to realize his or her full potential as a human being. The right of individuals to express their thoughts, desires and aspirations, and to communicate freely with others, affirms the dignity and worth of each and every member of society. Thus, freedom of expression is an end in itself and should not be subordinated to any other goals of society.

Second, freedom of expression is vital to the attainment and advancement of knowledge. The eminent 19th century civil libertarian, John Stuart Mill, contended that enlightened judgment is possible only if one considers all facts and ideas, from whatever source, and tests one's own conclusions against opposing views. But the right to express oneself is not conditioned on the content of one's views, which may be true or false, "good" or "bad," socially useful or harmful. All points of view should be represented in the "marketplace of ideas" so that society can benefit from debate about their worth.

Third, freedom of expression is necessary to our system of self-government. If the American people are to be truly sovereign, the masters of their fate and of their elected government, they must be well-informed. They must have access to all information, ideas and points of view. The precondition for a free society is an informed and enlightened citizenry. Tyrannies thrive on mass ignorance.

Fourth, freedom of expression provides a "check" against possible government corruption and excess, which seem to be permanent features of the human condition.

Restrictions on freedom of speech always authorize the government to decide how, and against whom, the restrictions should apply. The more authority the government has, the more it will use that authority to suppress unpopular minorities, criticism and dissent. Because freedom of expression is so basic to a free society, the ACLU believes that it should never be abridged by the government.

What was the early history of the First Amendment and freedom of expression?

The First Amendment's early years were not entirely auspicious. Although the early Americans enjoyed great freedom compared to citizens of other nations, even the Constitution's framers, once in power, could not resist the strong temptation to circumvent the First Amendment's clear mandate. In 1798, seven years after the First Amendment's adoption, Congress, over the objections of James Madison and Thomas Jefferson, passed the Alien and Sedition Act. Ironically, this Act incorporated much of the English law of seditious libel (indeed, seditious libel remained a part of our law for the next 171 years) and was used by the dominant Federalist Party to prosecute a number of prominent Republican newspaper editors. But none of those cases reached the Supreme Court.

Throughout the 19th century and much of the 20th, federal and state sedition, criminal anarchy and criminal conspiracy laws were used repeatedly to suppress expression by slavery abolitionists, religious minorities, early feminists, labor organizers, pacifists and left-wing political radicals. For example, prior to the Civil War every Southern state passed laws limiting speech in an attempt to stifle criticism of slavery. In Virginia, anyone who "by speaking or writing maintains that owners have no right of property in slaves" was subject to a one-year prison sentence.

In 1912, feminist Margaret Sanger was arrested for giving a lecture on birth control. Trade union meetings were banned and courts routinely granted employers' requests for injunctions that prohibited strikes and other labor protests. Protest against U. S. entry into World War I was widely suppressed, and dissenters were jailed for their pronouncements and writings. In the early 1920s, many states outlawed the display of red or black flags, symbols of communism and anarchism. In 1923, author Upton Sinclair was arrested for trying to read the First Amendment at a union rally. Many people were arrested merely for membership in groups regarded as radical by the government. It was in response to the excesses of this period that the ACLU was born in 1920.

How did the courts respond to First Amendment violations?

The lower courts were almost universally hostile to the First Amendment rights of political minorities. However, free speech issues did not reach the Supreme Court until 1919. That year, the Court dealt with free speech for the first time in the case of Schenck v. U.S. Charles T. Schenck, a member of the Socialist Party, had been convicted of violating the Espionage Act for mailing anti-war leaflets to draft-age men during World War I. The Supreme Court unanimously upheld his conviction. The prevailing

legal view at the time was that any speech that had a "tendency" to cause a violation of law could be punished.

The Schenck case was quickly followed by others that ended in decisions equally contemptuous of First Amendment freedoms. Among them was the case of Jacob Abrams, convicted under the Sedition Act of 1918 for distributing leaflets that criticized the American military. However, even though the Supreme Court upheld Abrams' conviction, the decision in his case was a watershed: Justices Oliver Wendell Holmes and Louis Brandeis dissented, stating that speech could not be punished unless it presented "a clear and present danger" of imminent harm. The Holmes-Brandeis dissent marked the beginning of modern First Amendment theory.

The Supreme Court declared the inviolability of First Amendment rights for the first time in 1925 in Gitlow v. New York, a case that challenged the conviction of a communist revolutionary under New York's Criminal Anarchy law. Although the Court affirmed the conviction, it announced that freedom of speech and press were protected by the First Amendment from federal encroachment, and "are among the fundamental personal rights and 'liberties' protected by the due process clause of the Fourteenth Amendment from impairment by the states." This holding paved the way for Yetta Stromberg to prevail, six years later, in an appeal of her conviction under a California law that made it a crime to publicly salute a red flag -- the symbol of revolution.

Thereafter, the right to freedom of expression became more secure -- that is, up until the advent of McCarthyism in the 1950s. During this second "red scare," the Supreme Court weakened the clear and present danger test by holding that speakers could be punished if they advocated overthrowing the government, no matter how remote the danger of such an occurrence might be. Under this new test, many political activists were prosecuted and jailed for advocating communist revolution. Laws that required people to sign loyalty oaths, swearing they were not members of any subversive organizations, were also upheld and not reversed until 1967.

Finally, in the 1969 case of Brandenburg v. Ohio, the Supreme Court struck down the conviction of a Ku Klux Klan member under a criminal syndicalism law and established a new standard: Speech may not be suppressed or punished unless it is intended to produce "imminent lawless action" and it is "likely to produce such action." Otherwise, the First Amendment protects even speech that advocates violence. The Brandenburg Test is the law today.

What forms of expression are protected by the First Amendment?

In addition to protecting "pure speech," expressed in demonstrations, rallies, picketing, leaflets, etc., the First Amendment also protects "symbolic speech" -- that is, nonverbal expression whose main purpose is to communicate ideas. In the 1969 case of Tinker v. Des Moines Independent Community School District, the Supreme Court recognized the right of high school students to protest the Vietnam War by wearing black armbands. In 1989 and again in 1990, the Court upheld the right of an individual to burn the American flag in public as an expression of disagreement with government policies. Other examples of protected expression include images in works of art, slogans or statements on T-shirts, "fashion statements" that incorporate symbols and/or written slogans or declarations, music lyrics and theatrical performances.

As well as protecting a free "marketplace of ideas" within our nation, the First Amendment also protects free trade in ideas across U. S. borders (although the law in this area is less well-defined). That protection encompasses both the right of Americans to travel and disseminate their ideas abroad, and their right to receive information from other countries -- in other words, their right to know. As Justice William J. Brennan, Jr. once observed, "The right to receive publications is a fundamental right...It would be a barren marketplace of ideas that had only sellers and no buyers."

Can speech be curtailed if it is thought to jeopardize national security?

At several points in our history, particularly during wartime, the government has sought to limit speech in the interest of "national security," a vague term that, if construed too broadly, can be used to justify the suppression of information vital to public discourse.

The ongoing controversy that surrounds competing claims of national security and freedom of expression came to a head in 1971 in the Pentagon Papers case. The New York Times obtained a copy

of, and published excerpts from, the so-called Pentagon Papers, a voluminous secret history and analysis of the nation's military involvement in Vietnam. When the Times ignored the government's demand that it halt such publication in the interest of national security, the newspaper was enjoined from continuing to publish portions of the document. Two weeks later, on expedited appeal, the Supreme Court ruled that the government could not, through "prior restraint," block publication of any material unless it could prove that the material would "surely" result in "direct, immediate, and irreparable" harm to the nation. Since the government had not met its burden of proof, the Times was free to continue the series.

While the Court's decision represented a victory for freedom of speech and press, it did strike an ominous note by tacitly accepting a national security exception to the First Amendment's ban on prior restraint. And in subsequent years, the Court upheld the government's national security claims in several cases involving former CIA agents who had written their memoirs.

The ACLU believes that national security, like all government interests, must be served only in ways that are consistent with our tradition of respect for individual rights.

Why should racists and other hate-mongers, or those espousing anti-democratic political doctrines, have free speech rights?

The Constitution does not authorize the government to assess the content of speech and then curtail the speech it judges to be irresponsible or wrong. If the government had such power, we would all be in danger. All people within the borders of the United States have the right to express themselves freely, even, in the words of Justice Felix Frankfurter, if they "speak foolishly and without moderation." In a society of laws, the laws must apply to everyone.

The ACLU's defense of the free speech rights of groups such as the Ku Klux Klan and the American Nazi Party has often stirred controversy and drawn criticism. But popular and palatable ideas do not need protection from government suppression; only unpopular and offensive doctrines do. As one federal judge has put it, our toleration of hateful speech is "the best protection we have against any Nazi-type regime in this country."

The Supreme Court has consistently rejected the notion that speech can be punished because it offends some people's sensibilities, and has generally invalidated statutes and practices that penalize expression based on content. The Court has also taken a dim view of breach-of-the-peace statutes when applied to expressive conduct. In the 1949 case of Terminiello v. Chicago, the Court struck down the disorderly conduct conviction of an anti-Semitic Catholic priest (suspended by the church for his views), who had provoked a violent confrontation when he denounced Jewish people at a political rally. The Court's decision, written by Justice William O. Douglas, stated: "The function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it invites a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger."

Can free speech be limited in any way?

The government may place "time, place and manner" restrictions on speech as long as they are "reasonable." For example, requiring people to obtain a permit to hold a meeting in a public building, or to conduct a demonstration that may interfere with traffic, constitutes a justifiable regulation.

But restrictions that are overly burdensome violate the First Amendment. For example, during the 1960s, officials in Southern cities frequently required civil rights activists to apply for permits in order to hold demonstrations, and then granted or denied the permits arbitrarily. Thus, in the 1969 case of Shuttlesworth v. Birmingham, the Supreme Court struck down such licensing schemes as unconstitutional. Similarly, in 1977, the Court ruled that the local government's requirement that members of the American Nazi Party post \$350,000 in insurance in order to hold a march and rally in Skokie, Illinois was an unconstitutional infringement on the group's First Amendment rights. Insurance requirements were also regularly used in the South to repress civil rights demonstrations.

Are any forms of expression not protected by the First Amendment?

The Supreme Court has established several limited exceptions to the First Amendment's protection:

FIGHTING WORDS: In the 1942 case of Chaplinsky v. New Hampshire, the Supreme Court held that so-called "fighting words...which by their very utterance inflict injury or tend to incite an immediate breach of the peace" are not protected under the First Amendment and can be punished. The Court based its decision on the concept that such utterances are of "slight social value as a step to truth."

LIBEL: In the 1964 case of New York Times Co. v. Sullivan, the Supreme Court held, in a groundbreaking decision, that defamatory falsehoods published about public officials are not protected by the First Amendment and can be punished if the offended official can prove that his/her accuser published the falsehoods with "actual malice" -- that is, with "knowledge that the statement was false or with reckless disregard of whether it was false or not." While the Court's decision addressed a particular type of common law libel, other kinds of "libelous statements" are also punishable.

COMMERCIAL SPEECH: In the 1976 case of Virginia Pharmacy Board v. Virginia Citizens Consumer Council, the Supreme Court struck down a state ban on prescription drug advertising on First Amendment grounds. However, commercial speech -- which includes advertising, financial and credit reports, and the like -- still has far less First Amendment protection than other speech. Generally, it can be banned if it is, on the whole, misleading or takes undue advantage of its audience.

OBSCENITY: "Obscene" material has historically been excluded from First Amendment protection, which has led to the official banning of such classics as James Joyce's Ulysses and D.H. Lawrence's Lady Chatterley's Lover, as well as the criminal prosecution of countless publishers, book distributors, storekeepers, film distributors and artists. But in the 1973 case of Miller v. California, the Court re-examined the issue and established a standard for determining whether material is obscene. The Court ruled that material is legally obscene if: (1) the average person, applying contemporary community standards, would conclude that the work, taken as a whole, appeals to prurient interests; (2) it depicts sexually explicit conduct, specifically defined by law, in a patently offensive manner; and (3) it lacks serious literary, artistic, political or scientific value. The Miller test is still the law today.

Unfortunately, the Supreme Court's long-standing unwillingness to strike down all obscenity laws as unconstitutional infringements on freedom of expression has allowed censorship to flourish at various times in our history because of public officials' tendency to apply the Court's narrow limits in overbroad ways. This remains a problem with all of the limited exceptions to the First Amendment.

Is freedom of expression in danger today?

The right to freedom of expression is being severely tested today, just as it has been throughout the 200-year history of the Bill of Rights. Governments by nature are always seeking to expand their powers beyond proscribed boundaries, the government of the United States being no exception. And since the right to free expression is not absolute, it must be constantly protected against official depredations.

Today, artistic expression is under attack, as some groups of citizens seek to impose their morality on the rest of society. Book censorship in the public schools, mandatory record labeling, as well as obscenity prosecutions of rap singers, record distributors and museum directors, are all manifestations of suppression efforts. Artists, performers and authors now occupy the same vulnerable position that political radicals did in the 1950s.

If the past two centuries of struggle to preserve freedom of expression have taught us anything, it is that the first target of government suppression is never the last. Whenever government gains the power to decide who can speak and what they can say, the First Amendment rights of all of us are in danger of being violated. But when all people are allowed to express their views and ideas, the principles of democracy and liberty are enhanced.

A C L U

Comstock Law Book Banning in U.S.

Artist/Author/Producer: Writers

Confronting Bodies: New York Society for the Suppression of Vice

Dates of action: 1873

Description of the Art Work

Many greatest classics such as Aristophanes Lysistrata, Rabelais's Gargantua, Chaucer's Canterbury tales, Boccaccio's Decameron, and the Arabian Nights.

Description of incident

"...Books banned from the U. S. mails under the Comstock Law included many of the greatest classics: Aristophanes Lysistrata, Rabelais's Gargantua, Chaucer's Canterbury tales, Boccaccio's Decameron and even The Arabian Nights. Furthermore, Heins includes modern authors censored under the Comstock Law.

"...Honore de Balzac, Victor Hugo, Oscar Wilde, Ernst Hemingway, John Dos Passos, Eugene O' Neil, James Joyce, D.H. Lawrence, Clifford Odets Erskine Caldwell, John Steinbeck, William Faulkner, F. Scott Fitzgerald...to name just a few." Sex, Sin and Blasphemy, Marjorie Heins pg. 19

"Founder of the New York Society for the Suppression of Vice (1872), whose slogans were: "Morals not Art and Literature!" and "Books are feeders for brothels!" Comstock campaigned tirelessly for censorship laws not only to stamp out erotic subject matter in art or literature, but to suppress information about sexuality, reproduction, and birth control. In 1873 he persuaded Congress (after less than an hour of debate) to pass the law (Federal Anti-Obscenity Act) that banned the mailing of materials found to be "lewd", "indecent", "filthy", or "obscene." Sex, Sin and Blasphemy, Marjorie Heins pg. 19

Furthermore Comstock was appointed a special agent of the U.S. Post Office, as such allowed to carry a gun and attack pornographers." (The Encyclopedia of Censorship, Jonathon Green, Facts on File , N.Y.C. Pg. 62-63) Over the next forty years Comstock prosecuted 3,500 individuals (although no more than 10% were found guilty) and had destroyed 120 tons of literature.

Results of incident

"...The Comstock Law remains on the books today, although the ban on information about birth control has been eliminated. In 1896 the court ruled that the federal Comstock Law didn't cover vulgar insults." Sex, Sin, and Blasphemy, Marjorie Heins, pg. 19

Source: New York Public Library, New York City

"Tom Sawyer" and "Huckleberry Finn"

Artist/Author/Producer: Clemens Samuel Langhorne (Mark Twain) (1835-1910)

Confronting Bodies: Public Libraries

Dates of action: 1876+

Location: United States, Soviet Union

Description of the Work

"The Adventures of Tom Sawyer", 1876 : novel featuring Tom, the "normal boy" mischievous but good hearted, winning triumphs through a number of adventures.

"The Adventures of Huckleberry Finn", 1885 : novel about a boy, Huck and his black friend Jim who together make a journey, interrupted by frequent stops, far down the Mississippi on a raft.

Description of incident

1876 U.S.A.-Brooklyn, N.Y.: "The Adventures of Tom Sawyer" was excluded from the children's room in the Public Library. Also excluded from the Denver Public Library. 1885 Concord, MA: In the home town of Henry David Thoreau, the "The Adventures of Huckleberry Finn" was banned by the Public Library as "trash and suitable only for the slums." The Concord Free Trade Club retaliated by electing the author to honorary membership. 1905 Brooklyn, N.Y.: The books were excluded from children's room of the Public Library as bad examples of ingenuous youth. Asa Don Dickinson, Librarian of Brooklyn College, appealed to the author to defend the slander. His reply, which was not published until 1924, said: "I am greatly troubled by what you say. I wrote "Tom Sawyer" and "Huck Finn" for adults exclusively, and it always distressed me when I find that boys and girls have been allowed access to them. The mind that becomes soiled in youth can never again be washed clean."

Results of incident

1930 Soviet Union: Books confiscated at the border. 1946 : Books had become best sellers in Soviet Union. 1957 United States-New York City : Dropped from list of approved books for seniors and junior high schools, partly because of objection to frequent use of the term "nigger" and famed character, "Nigger Jim." NOTE: Mr. Clemens censored "The Adventures of Huckleberry Finn" and deleted the profanity and other strong passages, but left some which have at times been criticized, such as: "All kings is mostly rascallions" (Ch.23) and "so the king he blatted along" (Ch.25). The London Athenaeum has called it one of the six greatest books ever written in America.

Source: Banned Books 387 B.C. to 1978 A.D., by Anne Lyon Haight, and Chandler B.

Samuel Goldwyn's film "Dead End"

Artist/Author/Producer: Samuel Goldwyn, Producer
Confronting Bodies: Production Code Administration

Dates of action: 1936

Location: Hollywood, CA

Description of the Work

"Dead End," a film about kids in the slums of New York.

Description of incident

Samuel Goldwyn was warned by Production Code Administration Director, Joseph Ignatius Breen, not to depict "filth, or smelly garbage cans, or garbage floating in the river," in Goldwyn's upcoming film "Dead End." Goldwyn adhered to the PDA demand by implementing his own form of self-censorship. "Goldwyn was shocked when he saw that William Wyler had made the slum and the East River "dirty." Producer and director fought, then compromised: for a scene in which the Kids swam through the mess, the refuse would be "clean." One "Dead End" news release celebrated the property man who halved the fresh grapefruit, washed the carrot greens and scrubbed the assorted debris that kids shared the water with."

Results of incident

Goldwyn himself supported the Production Code, thus explaining the ease with which he self-censored. Furthermore, "Goldwyn had not laundered the trash to charm Production Code associates; the genteel poverty of Dead End mirrored Goldwyn--and Hollywood--aesthetic of realism edged with guilt."

Source: American Film, L. Leff and J. Simmons, December 1989

Daddy's Roommate and Heather Has Two Mommies

Artist/Author/Producer: Michael Willhoite and Leslea Neuman

Confronting Bodies: Mercer County Library

Dates of action: 8/23/93

Location: Lawrence, New Jersey

Description of the Art Work

Two children's books about gay parenting.

Description of incident

Lawrence resident Keith Smith wanted "Daddy's Roommate," the controversial children's picture book about gay parenting by Michail Willhoite. He got what he wanted by complaining to the Mercer County Library Commission and by writing to County Executive Rober Prunetti. His complaints eventually prompted the library commission to move the book, along with "Heather Has Two Mommies," by Leslea Newman, out of the children's section and into the parenting section.

Smith is treasurer of the Lawrence Republican Club, but Prunetti said politics was not involved. "A lot of people are affiliated with Democrats or Republicans," he said. "What difference does it make?" Either way, the move angered librarians and many parents.

In March, a library system review committee had recommended that the books remain in the children's section. That decision was reversed by the commission after Prunetti said he simply passed the missive on to the county counsel, who advised the commission to review Smith's complaint.

Results of incident

The books remain in the parenting section of the library.

Source: Office for Intellectual Freedom, American Library Association

Computers and Academic Freedom Mailing List

Purpose: To discuss questions such as: How should general principles of academic freedom (such as freedom of expression, freedom to read, due process, and privacy) be applied to university computers and networks? How are these principles actually being applied? How can the principles of academic freedom as applied to computers and networks be defended?

Mitch Kapor of the Electronic Frontier Foundation has given the discussion a home on the eff.org machine. As of Sept, 1991, the list has 375 members in at least five countries. Thousands more read the list via newsgroups alt.comp.acad-freedom.talk and alt.comp.acad-freedom.news.

The long version:

When my grandmother attended the University of Illinois fifty-five years ago, academic freedom meant the right to speak up in class, to create student organizations, to listen to controversial speakers, to read "dangerous" books in the library, and to be protected from random searches of your dorm room.

Today these rights are guaranteed by most universities. These days, however, my academic life is very different from my grandmother's. Her academic life was centered on the classroom and the student union. Mine centers on the computer and the computer network. In the new academia, my academic freedom is much less secure.

It is time for a discussion of computers and academic freedom. I've been in contact with Mitch Kapor. He has given the discussion a home on the eff.org machine.

The suppression of academic freedom on computers is common. At least once a month, someone posts on Usenet for help. The most common complaint is that a newsgroup has been banned because of its content (usually alt.sex). In January, 1991, a sysadmin at the University of Wisconsin didn't ban any newsgroups directly. Instead, he reduced the newsgroup expiration time so that reading groups such as alt.sex is almost impossible. In April, 1991, a sysadmin at Case Western reported that he had removed a note that a student had posted to a local newsgroup. The sysadmin said the information in the note could be misused. In other cases, university employees may be reading e-mail or looking through user files. This may happen with or without some prior notice that e-mail and files are fair game.

In many of these cases the legality of the suppression is unclear. It may depend on user expectation, prior announcements, and whether the university is public or private.

The legality is, however, irrelevant. The duty of the University is not to suppress everything it legally can; rather it is to support the free and open investigation and expression of ideas. This is the ideal of academic freedom. In this role, the University acts a model of how the wider world should be. (In the world of computers, universities are perhaps the most important model of how things should be).

If you are interested in discussing this issues, or if you have first-hand experience with academic suppression on computers or networks, please join the mailing list.

- Carl Kadie

Banned Computer Material 1992

Inspired by Banned Book Week '92, this is a list of computer material that was banned or challenged in academia in 1992. Iowa State University has the dubious distinction of being listed most often (three times).

List of Banned Computer Materials

Computer code at *Ball State University* to crack passwords even if it is never run. During a system-wide search, an administrator found the computer code. The user says "[i]t really bothers me that I'm going to get in a lot of trouble (probably anyway) just for the mere possession of a program."

Lyrics to Ice-T's Cop Killer in a .plan file at *Boston University*

"Two people have complained to my department's chair... He asked me informally to remove it. I told him I would not do so voluntarily."

Articles in an open bulletin board at *Carnegie Mellon University* if they offend The University threatened to investigate the author on charges of sexual harassment unless he stopped writing.

Material from the rec.arts.erotica newsgroup at *Iowa State University*

To protest the University's ban of this newsgroup, a student reposted some of the articles to newsgroup isu.newsgroups. He was summarily expelled from the University computers. Later his account was restored. The incident made the front page of the student newspaper.

All "offensive" material at *North Dakota State University*

Banned by the Policy on Misuse of Computer Facilities

Any electronic posting at *Princeton* that demeans a person because of his or her beliefs banned by Princeton's Guidelines for the use of Campus and Network Computing Resources and the more general Rights, Rules, Responsibilities Policy.

Anti-Semitic material available at the *University of California at Berkeley* via the Internet challenged by a student, but the University and the Anti-Defamation League of B'nai B'rith said that censorship would be inappropriate.

All the alternative newsgroups (even alt.censorship) at the *University of Nebraska-Lincoln* because someone might find some of the articles in some of the newsgroups "objectionable". On April 6th the UNL Academic Senate Executive Committee voted to request restoration of the majority of the alt.* groups, but none have been restored.

Computer code at the *University of Wyoming* for Internet Relay Chat

A student was told that if university searches turned up IRC code in his possession, he "would be disused without hope for reinstatement."

Any network use on *Virginia Public Education Network* that violates "generally accepted social standards" (Pennsylvania). Such use is defined as "obscene" and is banned by PEN's Acceptable Use Policy.

Any "unwarranted annoyance" or "unsolicited email" at *Virginia Tech* banned by the Information System's Appropriate Use Policy. The policy is currently being revised.

The phrase "George Bush and his people need a bullet in the head" posted to the Net from *Williams College*

The posting led to a U.S. Secret Service and grand jury investigation.

All Netnews discussions of sex at *Simon Fraser University*